89-1.24

No.

Supreme Court, U.S.
FILED
JUL 21 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

UNITED AIR LINES, INC., *et al.*,
Petitioners,

vs.

BOARD OF ASSESSMENT APPEALS OF THE
STATE OF COLORADO, *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COLORADO SUPREME COURT

WILLIAM E. MURANE
(Counsel of Record)

ROBERT ALAN POE
ELIZABETH A. PHELAN
JOHN R. MAXFIELD

HOLLAND & HART
Post Office Box 8749
Denver, Colorado 80201
(303) 295-8000

Attorneys for Petitioners

July, 1989

QUESTION PRESENTED

Did the Colorado Supreme Court err in permitting the State of Colorado and its political subdivision, the City and County of Denver, to assess, levy, and collect discriminatory taxes on the property of certain airline companies *after* the effective date of § 532(b) of the Airport and Airway Improvement Act of 1982, 49 U.S.C. App. § 1513(d), which expressly prohibits such discriminatory taxes as an unreasonable burden on interstate commerce?

RULE 28.1 STATEMENT

A list of all parent companies, subsidiaries (except wholly owned subsidiaries) and affiliates of each Petitioner, as required by Rule 28.1, is set forth as Appendix H.

LIST OF PARTIES

Petitioners are: United Air Lines, Inc.; Frontier Airlines, Inc.; Continental Airlines, Inc.; Western Airlines, Inc.; Delta Airlines, Inc.; Republic Airlines, Inc.; Texas International Airlines, Inc.; Trans World Airlines, Inc.; Ozark Airlines, Inc.; Eastern Air Lines, Inc.; and American Airlines, Inc.

Respondents are: the State Board of Equalization of the State of Colorado; Don Eberle, Carl B. Bledsoe, Ted L. Strickland, Kenneth Smith, and C. Michael Callihan, in their official capacity as members of the State Board of Equalization of the State of Colorado; the Board of Assessment Appeals of the State of Colorado; Henry F. Shriver and F. William Beier, in their official capacity as members of the Board of Assessment Appeals of the State of Colorado; the Board of Equalization of the City and County of Denver sitting as a Board of County Commissioners; John Mrozek, Wes Martin, Thomas P. Briggs, Felicia Muftic, and Ted Hackworth, in their official capacity as members of the Board of Equalization of the City and County of Denver; the Department of Revenue of the City and County of Denver; Thomas P. Briggs, in his official capacity as Manager of the Department of Revenue of the City and County of Denver; and Mary Anne Maurer, in her official capacity as the Property Tax Administrator of the State of Colorado.

The parties to the proceeding in this Court are the same as the parties to the proceeding in the Colorado Supreme Court, except that School District No. 1 in and for the City and County of Denver, which appeared as *amicus curiae* in the Colorado Supreme Court, is not a party to this proceeding.

TABLE OF CONTENTS

	PAGE
Question Presented	i
Rule 28.1 Statement	ii
List of Parties	ii
Table of Authorities	iv
Opinions Below	1
Jurisdictional Statement	2
Statutory Provisions Involved	2
Statement of the Case	4
Reasons for Granting the Petition	7
I. The Colorado Supreme Court's Reliance on a State Law Definition of the Term "Assessment" as Used in 49 U.S.C. App. § 1513(d) is Directly Contrary to this Court's 1987 Decision in *Western Air Lines, Inc.* v. *Board of Equalization*, 480 U.S. 123	7
II. The Colorado Supreme Court's Interpretation of the Levy and Collection Prohibitions of § 1513(d)(1)(B) Renders that Provision of the Federal Statute Meaningless, Contrary to Decisions of this Court	13
III. The Colorado Supreme Court's Interpretation of the Prohibition Against Discriminatory Tax Rates in § 1513(d)(1)(C) Conflicts with Federal Precedent and with the Underlying Policy and Purpose of § 1513(d)	16
Conclusion	19

TABLE OF AUTHORITIES

CASES

	PAGE
Arkansas-Best Freight System, Inc. v. *Cochran*, 546 F.Supp. 904 (M.D. Tenn. 1981)	10, 15
Burlington Northern Railroad Co. v. *Department of Revenue*, 604 F.Supp. 1575 (W.D. Wis. 1985)	17
Denver v. *Tax Research Bureau*, 101 Colo. 140, 71 P.2d 809 (1937)	10
Lamm v. *Barber*, 192 Colo. 511, 565 P.2d 538 (1977)	8
Mountain States Telephone and Telegraph Co. v. *Pueblo of Santa Ana*, 472 U.S. 237 (1985)	14
Tennessee v. *Louisville & Nashville Railroad Co.*, 478 F.Supp. 199 (M.D. Tenn. 1979), *aff'd*, 652 F.2d 59 (6th Cir.), *cert. denied*, 454 U.S. 834 (1981)	15, 18
Trailer Train Co. v. *State Board of Equalization*, 697 F.2d 860 (9th Cir.), *cert. denied*, 464 U.S. 846 (1983)	15
United States v. *Menasche*, 348 U.S. 528 (1955)	14
Weinberger v. *Hynson, Westcott and Dunning, Inc.*, 412 U.S. 609 (1973)	14
Western Air Lines, Inc. v. *Board of Equalization*, 480 U.S. 123 (1987)	7, 8, 12

STATUTES

Section 523(b) of the Airport and Airway Improvement Act of 1982, Public Law 97-248, 96 Stat. 695	4, 9

PAGE

Section 532(b) of the Airport and Airway Improvement Act of 1982, Public Law 97-248, 96 Stat. 701, 49 U.S.C. App. § 1513(d) 2, 4

Section 31 of the Motor Carrier Act of 1980, Public Law 96-296, 94 Stat. 823, 49 U.S.C. § 11503a 9, 14

Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976, Public Law 94-210, 90 Stat. 54, 49 U.S.C. § 11503 14

28 U.S.C. § 1257(a) 2

Section 39-1-104(9)(a), 16B Colo. Rev. Stat. (1982 Repl. Vol.) 5

Section 39-4-101(2.5), 16B Colo. Rev. Stat. (1982 Repl. Vol.) 5

Section 39-4-102(3)(a), 16B Colo. Rev. Stat. (1982 Repl. Vol.) 5

CONSTITUTION

Supremacy Clause of the United States Constitution, art. VI, cl. 2 18

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

UNITED AIR LINES, INC., *et al.*,
Petitioners,

vs.

BOARD OF ASSESSMENT APPEALS OF THE
STATE OF COLORADO, *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE COLORADO SUPREME COURT

Petitioners United Air Lines, Inc., Frontier Airlines, Inc., Continental Airlines, Inc., Western Airlines, Inc., Delta Airlines, Inc., Republic Airlines, Inc., Texas International Airlines, Inc., Trans World Airlines, Inc., Ozark Airlines, Inc., Eastern Air Lines, Inc., and American Airlines, Inc. (collectively, the "Airlines"), respectfully petition for a writ of certiorari to review the judgment of the Colorado Supreme Court in this case.

OPINIONS BELOW

The opinion of the Colorado Supreme Court, reproduced as Appendix A, is not yet officially reported. The opinion of the Colorado Court of Appeals, reproduced as Appendix B, is reported at 749 P.2d 986. The ruling and amendment of ruling issued by the District Court for the City and County of Denver, Colorado, reproduced as Appendix C and Appendix D, respectively, are not reported. The separate opinions issued by the two members of the Colorado Board of

Assessment Appeals, reproduced as Appendix E and Appendix F, respectively, are not reported. The ruling of the Board of County Commissioners of the City and County of Denver, Colorado, reproduced as Appendix G, is not reported.

JURISDICTIONAL STATEMENT

The judgment of the Colorado Supreme Court, reproduced as Appendix A, was entered on April 24, 1989. No petition for rehearing in the Colorado Supreme Court was filed, and no extension of time to file a petition for writ of certiorari in this Court has been sought. This Court has jurisdiction to review the judgment of the Colorado Supreme Court by writ of certiorari pursuant to 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS INVOLVED

Section 532(b) of the Airport and Airway Improvement Act of 1982, Public Law 97-248, 96 Stat. 701, as codified at 49 U.S.C. App. § 1513(d), provides as follows:

> (d) **Acts which unreasonably burden and discriminate against interstate commerce; definitions**
>
> (1) The following acts unreasonably burden and discriminate against interstate commerce and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:
>
> (A) assess air carrier transportation property at a value that has a higher ratio to the true market value of the air carrier transportation property than the ratio that the assessed value of other commercial and industrial property of the same type in the same assessment jurisdiction has to the true market value of the other commercial and industrial property;

(B) levy or collect a tax on an assessment that may not be made under subparagraph (A) of this paragraph; or

(C) levy or collect an ad valorem property tax on air carrier transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(2) In this subsection —

(A) "assessment" means valuation for a property tax levied by a taxing district;

(B) "assessment jurisdiction" means a geographical area in a State used in determining the assessed value of property for ad valorem taxation;

(C) "air carrier transportation property" means property, as defined by the Civil Aeronautics Board, owned or used by an air carrier providing air transportation;

(D) "commercial and industrial property" means property, other than transportation property and land used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use and subject to a property tax levy; and

(E) "State" shall include the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States, and political agencies of two or more States.

(3) This subsection shall not apply to any in lieu tax which is wholly utilized for airport and aeronautical purposes.

STATEMENT OF THE CASE

Prior to 1982 a number of states, including Colorado, discriminated against airline companies by imposing property taxes on the property of such companies that exceeded, as a percentage of the true market value of such property, the property taxes imposed on other commercial and industrial property in the same jurisdiction. Congressional concern about the impact of such discrimination on the nation's air transportation system resulted in the inclusion in the Airport and Airway Improvement Act of 1982, Public Law 97-248, of a specific statutory prohibition against such discrimination. Section 532(b) of that statute, as codified at 49 U.S.C. App. § 1513(d), provides that certain acts unreasonably burden and discriminate against interstate commerce, and it prohibits a state, a subdivision of a state, or an authority acting for a state or a subdivision of a state from commiting such acts.

As of the effective date of § 1513(d), the following acts are prohibited: (1) the assessment of air carrier transportation property at a value that has a higher ratio to the true market value of such property than the ratio of the assessed value of other commercial and industrial property to the true market value of such other property; (2) the levy or collection of a tax on such an assessment; and (3) the levy or collection of a property tax on air carrier transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same jurisdiction. Under the general effective date provision of the Airport and Airway Improvement Act of 1982, § 1513(d) took effect on the date of enactment, which was September 3, 1982. Section 523(b) of Public Law 97-248, 96 Stat. 695.

Without question, Colorado's property tax system in effect for the 1982 tax year discriminated against air carrier transportation property, including the property of the Airlines who are petitioners in this case. Specifically, the Airlines were classified as public utilities for Colorado property tax

purposes, and their property was therefore assessed at a 1981 level of value rather than the 1973 level of value generally applied to commercial and industrial property other than the property of public utilities. Sections 39-4-101(2.5), 39-4-102(3)(a), and 39-1-104(9)(a), 16B Colo. Rev. Stat. (1982 Repl. Vol.). The parties to this case stipulated in the state district court that the application of those Colorado statutory provisions in tax year 1982, produced assessments on the property of the Airlines that were nearly double the assessments that would be imposed on that property if the antidiscrimination rules of § 1513(d) were applied to those assessments. Stipulation, reproduced as Appendix I.

After September 3, 1982, the effective date of § 1513(d), certain agencies and officials of the State of Colorado and the City and County of Denver ("Denver") took actions to adopt the discriminatory 1982 property tax assessments on the Airlines' property and to levy and collect taxes on those assessments. Specifically, the Colorado State Board of Equalization met after September 3, 1982, and, pursuant to Colorado constitutional and statutory provisions, performed its equalization function by reviewing and approving the abstracts of assessment for the various Colorado counties. The Colorado State Auditor thereafter certified the abstracts of assessment to the county assessors on September 21, 1982. The 1982 taxes were levied on property in Denver, including the property of the Airlines, after the State Auditor had certified the abstract of assessment to the Denver assessor, and the 1982 taxes were not collected from the Airlines until February and July, 1983.

In view of the actions taken by the state and county tax officials after September 3, 1982, to assess, levy and collect discriminatory property taxes on their property, the Airlines sought relief through the prescribed Colorado administrative and judicial process, raising at each stage of the proceedings the federal statute's prohibition against the assessment, levy

and collection of the discriminatory taxes.[1] This process culminated in the Colorado Supreme Court's reversal of the holding of the Colorado Court of Appeals that the collection of the discriminatory taxes violated § 1513(d). The Colorado Supreme Court determined that the "equalization" function performed by the State Board of Equalization was distinct from the assessment function, and therefore held that the assessments on the Airlines' property for tax year 1982 were completed prior to the effective date of § 1513(d). Appendix at A-19. Having found that the assessments were completed prior to the effective date of § 1513(d), the court held that § 1513(d)(1)(A) did not prohibit the assessments. Appendix at A-21. The court further held that Denver was not prohibited from levying and collecting the discriminatory taxes after the effective date of § 1513(d), because subparagraph (B) of that section only prohibits the levy and collection of taxes on assessments that are themselves prohibited by subparagraph (A). Appendix at A-22. Finally, the court held that § 1513(d)(1)(C) did not prohibit the levy and collection of the discriminatory taxes, on the theory that subparagraph (C) only applies when the nominal tax rate (as opposed to the effective tax rate) discriminates against air carrier transportation property. Appendix at A-23 to A-24.

---

[1] Pursuant to Rule 21.1(h), the Appendix contains an excerpt from the relevant document filed by the Airlines at each administrative and judicial level. Specifically, Appendix J is an excerpt from the Petitions for Abatement or Refund of Taxes filed with Denver, Appendix K is an excerpt from the Petitions of Appeal filed with the Board of Assessment Appeals, Appendix L is an excerpt from the Complaints filed in Denver District Court, and Appendix M is an excerpt from the Airlines' Notice of Appeal from the Denver District Court's decision. The Airlines' claim that § 1513(d) prohibited the assessment, levy, and collection of the discriminatory taxes was rejected by each administrative agency and court except the Colorado Court of Appeals. Appendix at A-51, A-44, A-36, and A-30.

REASONS FOR GRANTING THE PETITION

I. THE COLORADO SUPREME COURT'S RELIANCE ON A STATE LAW DEFINITION OF THE TERM "ASSESSMENT" AS USED IN 49 U.S.C. APP. § 1513(d) IS DIRECTLY CONTRARY TO THIS COURT'S 1987 DECISION IN *WESTERN AIR LINES, INC.* V. *BOARD OF EQUALIZATION*, 480 U.S. 123.

The Colorado Supreme Court's decision in this case hinges entirely on its conclusion that the discriminatory 1982 property tax assessments on the Airlines' property were completed before September 3, 1982, the effective date of § 1513(d). In reaching this conclusion, however, the court erroneously relied on a state law definition of the term "assessment," in direct contravention of this Court's ruling in *Western Air Lines, Inc.* v. *Board of Equalization*, 480 U.S. 123 (1987). The Colorado Supreme Court's decision not only fails to give effect to the policy and purpose underlying § 1513(d), it also establishes a precedent under which states may circumvent the antidiscrimination mandates of § 1513(d) and similar federal statutes through the use of carefully selected terminology in their discriminatory property tax laws.

The Colorado Supreme Court acknowledged that, after September 3, 1982, certain agencies and officials of the State of Colorado took actions that were necessary steps in the process of providing to county officials the final valuations against which 1982 property taxes were levied. In particular, the review of the abstracts of assessment by the State Board of Equalization and the subsequent certification of those abstracts to county assessors by the State Auditor did not occur until after the prohibitions of § 1513(d) became law. Appendix at A-10. The court held that these actions by the State Board of Equalization and the State Auditor did not violate § 1513(d), because such actions were part of the "equalization" process rather than the assessment process

under state law. Appendix at A-17 to A-19. The court described the state law distinction between these two processes as follows:

> In contrast to assessment, which consists of placing a valuation on a particular piece of property belonging to a particular taxpayer, the duty of the State Board of Equalization is to equalize the assessed valuations of classes and subclasses of property on a statewide basis by adjusting the total valuations placed upon particular classes or subclasses of property. We recognized this distinction between assessment and equalization in *Lamm* v. *Barber*, 192 Colo. 511, 521, 565 P.2d 538, 545 (1977), where we stated:
>
> > Assessment is the act of placing a value for tax purposes upon the property of a particular taxpayer. Equalization, on the other hand, is the act of raising or lowering the total valuation placed upon a class, or subclass, of property in the aggregate. Equalization deals with all the property of a class or subclass within a designated territorial limit, such as a county, without regard to who owns the individual parcels making up the class or subclass. Assessment relates to individual properties; equalization relates to classes of property collectively.

Appendix at A-17 to A-18.

The Colorado Supreme Court's reliance on a state law distinction between two steps of the process of fixing final valuations against which property taxes are levied is directly contrary to the reasoning of the Court in *Western Air Lines*, 480 U.S. at 129-30. In that case, the Court specifically sought the views of the parties and the Solicitor General on the question of whether the definition of a phrase in § 1513(d)

was a question of state law or federal law. The Court concluded that:

> The general principle that, absent a clear indication to the contrary, the meaning of words in a federal statute is a question of federal law has especial force when the purpose of the federal statute is to eliminate discriminatory state treatment of interstate commerce.

480 U.S. at 129-30. The Court then interpreted the statutory phrase at issue in that case "in light of the policy embodied in the federal provision" and "in a manner that comports with the policies of the Airport and Airline [sic] Improvement Act." 480 U.S. at 130, 134.

In this case, Congress specifically defined the term "assessment" in § 1513(d) to mean "valuation for a property tax levied by a taxing district." 49 U.S.C. App. § 1513(d)(2)(A). In addition, Congress did not provide for a delayed effective date for the antidiscrimination provisions of § 1513(d), but rather specified that those provisions would take effect on the date of enactment of the Airport and Airway Improvement Act of 1982. Section 523(b) of Public Law 97-248, 96 Stat. 695. The absence of a delayed effective date for the virtually identical antidiscrimination provisions of Section 31 of the Motor Carrier Act of 1980, Public Law 96-296, 94 Stat. 823, 49 U.S.C. § 11503a, led a federal district court to the "inescapable" conclusion that:

> Congress determined to take immediate action to alleviate some of the competitive disadvantages to which motor carriers had been subjected at the hands of the states. . . . The court concludes that

> immediate implementation of the Motor Carrier Act was intended . . . .

Arkansas-Best Freight System, Inc. v. *Cochran*, 546 F.Supp. 904, 912-13 (M.D. Tenn. 1981). Thus, by adopting § 1513(d) without a delayed effective date, Congress clearly intended that, as of September 3, 1982, the states and their subdivisions lost all power to take any action to establish valuations for property tax levies that discriminated against air carrier transportation property, regardless of whether such action was characterized under state law as part of the assessment process, the equalization process, or some other process.

For the 1982 tax year in Colorado, the valuations against which Denver could levy property taxes did not exist until the final abstracts of assessment were approved by the State Board of Equalization and certified to the county assessors by the State Auditor, both of which actions occurred after the effective date of § 1513(d). *Denver* v. *Tax Research Bureau*, 101 Colo. 140, 144, 71 P.2d 809, 811 (1937) ("[T]he assessment for ad valorem taxes is not fully completed until the termination of the annual meeting of the State Board of Equalization . . . "). Since the final valuations against which property taxes could be levied did not exist under state law until after September 3, 1982, the state action necessary to complete those valuations was prohibited by § 1513(d). The illegality of such actions cannot be changed by the Colorado Supreme Court's state law characterization of those actions as part of the "equalization" rather than assessment process.

In its decision, the Colorado Supreme Court concluded that the assessment process in Colorado for tax year 1982 ended when the Airlines were notified of their valuations or adjusted valuations and did not seek further review of those valuations or adjusted valuations. Appendix at A-19. This focus on the pre-assessment assignment of values to the property of the Airlines fails to give effect to the purpose of the statutory scheme under § 1513(d). The entire thrust of

§ 1513(d) is to equalize property tax assessments on air carrier transportation property with assessments on other commercial and industrial property in the same assessment jurisdiction. Thus, the particular values assigned to the property of the Airlines are, in the abstract, meaningless in determining whether § 1513(d) has been violated. It is only by comparing the values assigned to the property of the Airlines with the values assigned to all other commercial and industrial property in the assessment jurisdiction that violation of or compliance with § 1513(d) can be determined. Such a comparison cannot be made, even if the values of the property of the Airlines have been finally determined, until the final values of all commercial and industrial property in the assessment jurisdiction have been determined. This process is not complete until all steps have been taken to establish the final values against which property taxes may be levied, including (in the words used by the Colorado Supreme Court to define the "equalization" process) "adjusting the total valuations placed upon particular classes or subclasses of property." Appendix at A-18. Whether under state law those steps are characterized as "assessment," "equalization," or something else, they constitute state action that is part of the process of fixing valuations for property taxes levied by taxing districts in Colorado, and the taking of such steps after September 3, 1982, was illegal, since the resulting final valuations were discriminatory.

If allowed to stand, the Colorado Supreme Court's decision may have an effect far beyond the immediate — and not insubstantial — result that the Airlines were required to pay over $3 million in discriminatory property taxes in Colorado for tax year 1982.[2] The court's formalistic distinction

[2] In addition to the refunds sought by the Airlines from Denver, the Airlines have requested refunds from the seven other Colorado counties in which they paid 1982 property taxes. Those requests are being held in abeyance at various administrative levels, pending the outcome of this case. In total, the Airlines have requested refunds of $3,121,481.20 from Colorado counties, plus interest on that amount.

between the assessment process and the "equalization" process under state law establishes a precedent under which states can circumvent the prohibitions of § 1513(d). Because § 1513(d)(1)(A) prohibits only discriminatory assessments, a state could, under the court's decision, issue nondiscriminatory "assessments" to airline companies, and then increase those assessments (or decrease the assessments of other commercial and industrial property) through the "equalization" process. Since, as is discussed below, the Colorado Supreme Court also ruled that the levy and collection of discriminatory taxes is prohibited only if the assessments are prohibited or if the nominal tax rate (as opposed to the effective tax rate) discriminates, this blatant discrimination against air carrier transportation property would not be prohibited by § 1513(d), as interpreted by the court. This interpretation "would do no more than place a meaningless hurdle before state legislatures seeking to conform their tax scheme to the requirements" of § 1513(d), *Western Air Lines*, 480 U.S. at 133, and should not be allowed to stand without review by this Court.

The Congressional purpose and policy of immediately prohibiting state property tax discrimination against air carrier transportation property, embodied in § 1513(d), is not served by the court's application of a state law definition to the term "assessment" as used in the federal statute. Rather, as this Court held in the *Western Air Lines* case, the terms used in § 1513(d) must be defined by federal law in a way that implements, rather than frustrates, the Congressional mandate. The Colorado Supreme Court's failure to apply a federal law definition in this case creates a conflict between its decision and the decision of this Court in the *Western Air Lines* case, and the petition for writ of certiorari should be granted to resolve that conflict.

II. THE COLORADO SUPREME COURT'S INTERPRETATION OF THE LEVY AND COLLECTION PROHIBITIONS OF § 1513(d)(1)(B) RENDERS THAT PROVISION OF THE FEDERAL STATUTE MEANINGLESS, CONTRARY TO DECISIONS OF THIS COURT.

It is undisputed that the actual levy of the 1982 taxes against the Airlines' property and the collection of those taxes occurred well after the effective date of § 1513(d). The Airlines have contended throughout the course of this litigation that such levy and collection of the discriminatory 1982 taxes after the effective date of § 1513(d) constituted an independent violation of that statute; specifically, § 1513(d)(1)(B), which provides that a state or a subdivision of a state may not "levy or collect a tax on an assessment that may not be made under subparagraph (A)" of § 1513(d)(1). It is evident from the statutory scheme that subparagraph (B) proscribes a second type of state action, beyond the state action prohibited by subparagraph (A). Thus, subparagraph (B) is violated by the levy and collection of discriminatory taxes after the effective date of § 1513(d), even if the discriminatory assessments were completed prior to the effective date.

The Colorado Supreme Court rejected the Airlines' argument on this point, ruling that "if an assessment does not violate subparagraph (A), then the levy and collection of a tax on such an assessment is not within the prohibition of subparagraph (B)." Appendix at A-22. Notwithstanding the court's disclaimer to the contrary, Appendix at A-21, the effect of the court's interpretation of subparagraph (B) of § 1513(d)(1) is to render the subparagraph superfluous. As interpreted by the Colorado Supreme Court, subparagraph (B) adds nothing to the prohibition of subparagraph (A), and subparagraph (B) would not apply in any case unless subparagraph (A) has also been violated. This interpretation ascribes to Congress an intent to include a meaningless or redundant subparagraph in

§ 1513(d)(1). As the Colorado Supreme Court itself acknowledged in a different part of its opinion in this case, this Court's pronouncements preclude ascribing such an intent to Congress. Appendix at A-23, *citing Mountain States Telephone and Telegraph Co.* v. *Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Weinberger* v. *Hynson, Westcott and Dunning, Inc.*, 412 U.S. 609, 633 (1973); *United States* v. *Menasche*, 348 U.S. 528, 538-39 (1955).

In this case, a reasonable interpretation of § 1513(d)(1) exists which gives meaning and effect to both subparagraph (A) and subparagraph (B) of that section. The proper interpretation ascribes to Congress an intent to eliminate, as of the effective date of § 1513(d), all state action that discriminated against air carrier transportation property with respect to property taxes, regardless of whether such state action was part of the process of assessing the discriminatory taxes or was part of the process of levying or collecting the discriminatory taxes. Congress intended that, as of the effective date of § 1513(d), all state laws providing for or permitting discriminatory property taxation of air carrier transportation property would be preempted, in order to provide immediate relief for the nation's air transportation system from the unreasonable burden imposed on it by the discriminatory tax policies of the states.

This interpretation is consistent with the efforts of federal courts to give full effect to the purpose and policy underlying virtually identical federal antidiscrimination laws applicable to rail transportation property (Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 (the "4-R Act"), Public Law 94-210, 90 Stat. 54, 49 U.S.C. § 11503) and motor carrier transportation property (Section 31 of the Motor Carrier Act of 1980, Public Law 96-296,

94 Stat. 823, 49 U.S.C. § 11503a).[3] For example, in refusing to allow California to collect discriminatory taxes on rail transportation property after the effective date of the 4-R Act, the Ninth Circuit Court of Appeals rejected that state's argument that such collection was legal because the assessments upon which the discriminatory taxes were collected pre-dated the effective date of the 4-R Act. *Trailer Train Co.* v. *State Board of Equalization*, 697 F.2d 860, 864-65 (9th Cir.), *cert. denied*, 464 U.S. 846 (1983) ("Allowing the additional tax to relate back to 1978 and escape the application of [the 4-R Act] not only would subvert Congress' purpose in postponing the statute's effective date, but also would run counter to the basic policy of [the 4-R Act] to prohibit discriminatory taxation of railroad property"). Similarly, in *Arkansas-Best Freight System, Inc.* v. *Cochran*, 546 F.Supp. 904, 912 (M.D. Tenn. 1981), the federal district court rejected Tennessee's argument that the Motor Carrier Act of 1980 did not apply to the 1980 tax year in that state because state law established an assessment date of January 1, which pre-dated the effective date of the federal statute. *See also Tennessee v. Louisville & Nashville Railroad Co.*, 478 F.Supp. 199, 209 (M.D. Tenn. 1979), *aff'd*, 652 F.2d 59 (6th Cir.), *cert. denied*, 454 U.S. 834 (1981) ("On the basis of the doctrine of federal supremacy, therefore, this Court concludes that the federal statute prohibiting tax discrimination against rail transportation property, which became effective February 5, 1979, requires the State of Tennessee to reduce the assessment ratio for railroad property to the assessment ratio of other commercial and industrial property for the 1979 tax year").

---

[3] Both of these similar statutes specifically grant to federal district courts jurisdiction to enjoin state actions that violate their antidiscrimination prohibitions. The reason for the absence of such a provision in § 1513(d) is not explained in the legislative history of that statute. Surely, however, Congress did not intend by this omission to authorize state courts to interpret and apply § 1513(d) in a more restrictive fashion than that utilized by the federal courts under statutes containing virtually identical language and intended to address the same problems.

The strained, narrow and restrictive interpretation of § 1513(d)(1)(B) by the Colorado Supreme Court stands in stark contrast to these federal courts' efforts to give full effect to the purpose and policy underlying the antidiscrimination provisions of the 4-R Act and the Motor Carrier Act of 1980. The Colorado Supreme Court erred in failing to give effect to the Congressional purpose underlying subparagraph (B) of § 1513(d)(1), and the petition for writ of certiorari should be granted in order to correct that error.

III. THE COLORADO SUPREME COURT'S INTERPRETATION OF THE PROHIBITION AGAINST DISCRIMINATORY TAX RATES IN § 1513(d)(1)(C) CONFLICTS WITH FEDERAL PRECEDENT AND WITH THE UNDERLYING POLICY AND PURPOSE OF § 1513(d).

Subparagraph (C) of § 1513(d)(1) prohibits the levy or collection of an ad valorem property tax on air carrier transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction. The Airlines acknowledge that the *nominal* tax rate applied to the valuations for assessment of their property in Denver for tax year 1982 was the same as the *nominal* tax rate applied to the valuations for assessment of other commercial and industrial property. However, the valuation of the Airlines' property at the 1981 level of value while other commercial and industrial property was valued at 1973 levels of value produced a higher *effective* tax rate on the Airlines' property than the *effective* tax rate applicable to other commerical and industrial property. As noted above, the additional tax paid by the Airlines as a result of the application of the 1981 level of value to their property exceeds $3

million. The Airlines have contended throughout this litigation that the levy and collection after September 3, 1982, of the 1982 property taxes on their property at the higher effective tax rate violated § 1513(d)(1)(C).

The Colorado Supreme Court rejected the Airlines' claims under § 1513(d)(1)(C), on the theory that subparagraph (C) applies only if the nominal tax rates discriminate. Appendix at A-23. The court rejected as unpersuasive authority the contrary analysis in the amended opinion of the federal district court in *Burlington Northern Railroad Co.* v. *Department of Revenue*, 604 F.Supp. 1575 (W.D. Wis. 1985), a case involving the application of the antidiscrimination provisions of the 4-R Act. In that case, the court applied 49 U.S.C. § 11503(b)(3), which is nearly identical to § 1513(d)(1)(C), to the 1981 through 1983 tax years in Wisconsin. The court was required to compare tax rates applicable to rail transportation property for those tax years to the tax rate applicable to other commercial and industrial property. In doing so, the court did not restrict itself to consideration of the *nominal* tax rates applied to the relevant classes of property. Rather, the court determined the *effective* tax rate applicable to commercial and industrial property by considering specifically the impact of varying assessment ratios on such effective tax rates. 604 F.Supp. at 1580. Thus, the court clearly recognized that the statutory provision analogous to § 1513(d)(1)(C) prohibited discriminatory effective tax rates, even if the source of the discrimination was a difference in the assessment ratios applied in valuing different classes of property for property tax purposes, rather than a difference in the nominal tax rates applied to the valuations for assessment of the different classes of property.

The analysis of the federal district court in *Burlington Northern Railroad Co.* is consistent with, and the decision of the Colorado Supreme Court in this case is contrary to, the purpose and policy underlying § 1513(d)(1)(C). By its use of three separate subparagraphs in § 1513(d)(1), Congress

unequivocally expressed its mandate that, as of the effective date of § 1513(d), state property tax discrimination against air carrier transportation property would cease, regardless of the form or source of such discrimination and regardless of the nature of the state action occurring after the effective date with respect to such discriminatory taxation. It is inconceivable that Congress could have intended to distinguish between a state that discriminated against the Airlines through different nominal tax rates and a state, such as Colorado, that achieved the same result through the application of discriminatory valuation standards. The former was clearly prohibited by subparagraph (C) from collecting the discriminatory taxes as of September 3, 1982, but the Colorado Supreme Court permitted the latter to collect the discriminatory taxes in July, 1983, nearly eleven months after the effective date of § 1513(d).

Through its restrictive interpretation of subparagraph (C), the Colorado Supreme Court effectively postponed the application of § 1513(d) until the 1983 tax year in Colorado, for which taxes were not collected until 1984, nearly two full years after the effective date of § 1513(d). As a federal district court said in rejecting Tennessee's similar attempt to avoid the application of the antidiscrimination provisions of the 4-R Act to the 1979 tax year in that state, "[s]uch a construction frustrates the congressional purpose in fixing the effective date" of the federal statute. *Tennessee* v. *Louisville & Nashville Railroad Co.*, 478 F.Supp 199, 209 (M.D. Tenn. 1979), *aff'd*, 652 F.2d 59 (6th Cir.), *cert. denied*, 454 U.S. 834 (1981). Thus, on the basis of the Supremacy Clause of the United States Constitution, art. VI, cl. 2, the Colorado laws permitting the levy and collection of property taxes on the Airlines' property at a discriminatory effective tax rate were preempted as of September 3, 1982. The petition for writ of certiorari should be granted in order to correct the Colorado Supreme Court's restrictive and erroneous interpretation of

subparagraph (C) that permitted the levy and collection of the discriminatory taxes long after the effective date of the federal statute.

CONCLUSION

Based on the foregoing, the petition for writ of certiorari should be granted.

Respectfully submitted,

WILLIAM E. MURANE
(Counsel of Record)

ROBERT ALAN POE
ELIZABETH A. PHELAN
JOHN R. MAXFIELD

HOLLAND & HART
Post Office Box 8749
Denver, Colorado 80201
(303) 295-8000

Attorneys for Petitioners

July, 1989

APPENDIX

APPENDIX

TABLE OF CONTENTS

	PAGE
A. Opinion of the Colorado Supreme Court in *State Board of Equalization, et al.* v. *American Airlines, Inc., et al.*, No. 87 SC 430, April 24, 1989	A-1
B. Opinion of the Colorado Court of Appeals in *American Airlines, Inc., et al.* v. *State Board of Equalization, et al.*, No. 85 CA 1154, August 27, 1987, reported at 749 P.2d 986	A-26
C. Ruling of the District Court, City and County of Denver, Colorado, in *American Airlines, Inc., et al.* v. *Board of Assessment Appeals of the State of Colorado, et al.*, Civil Action Nos. 84 CV 4505 through 84 CV 4515 and 84 CV 6469, May 14, 1985	A-33
D. Amendment of Ruling of the District Court, City and County of Denver, Colorado, in *American Airlines, Inc., et al.* v. *Board of Assessment Appeals of the State of Colorado, et al.*, Civil Action Nos. 84 CV 4505 through 84 CV 4515 and 84 CV 6469, June 6, 1985	A-37
E. Member Shriver's Opinion, Board of Assessment Appeals, State of Colorado, in *American Airlines, Inc., et al.* v. *Denver County Board of Commissioners*, Docket Nos. 4668 through 4680, April 13, 1984	A-39
F. Member Beier's Opinion, Board of Assessment Appeals, State of Colorado, in *American Airlines, Inc., et al.* v. *Denver County Board of Commissioners*, Docket Nos. 4668 through 4680, April 13, 1984	A-45

PAGE

G. Ruling of the Board of County Commissioners of the City and County of Denver, Colorado, November 22, 1983 ..... A-51

H. List of Parent Companies, Subsidiaries (Except Wholly Owned Subsidiaries) and Affiliates of Petitioners Pursuant to Rule 28.1 A-53

I. Stipulation filed in District Court, April 23, 1985 ..... A-54

J. Excerpt from Petitions for Abatement or Refund of Taxes filed with Denver, July 22, 1983 (Exhibits D-1 through D-11 of Board of Assessment Appeals Record)..... A-57

K. Excerpt from Memorandum attached to Petitions to Colorado Board of Assessment Appeals, December 20, 1983 ..... A-58

L. Excerpt from Complaints filed by Airlines in the District Court, City and County of Denver, Colorado, May 9, 1984 ..... A-59

M. Excerpt from Plaintiffs'-Appellants' Joint – Notice of Appeal, filed in Colorado Supreme Court, July 18, 1985 ..... A-60

APPENDIX A

SUPREME COURT, STATE OF COLORADO

No. 87SC430 April 24, 1989

STATE BOARD OF EQUALIZATION OF THE STATE OF COLORADO; DON EBERLE, CARL B. BLEDSOE, TED L. STRICKLAND, KENNETH SMITH, and C. MICHAEL CALLIHAN, in their official capacity as members of the State Board of Equalization of the State of Colorado; BOARD OF ASSESSMENT APPEALS OF THE STATE OF COLORADO; HENRY F. SHRIVER and F. WILLIAM BEIER, in their official capacity as members of the Board of Assessment Appeals of the State of Colorado; BOARD OF EQUALIZATION OF THE CITY AND COUNTY OF DENVER SITTING AS A BOARD OF COUNTY COMMISSIONERS; JOHN MROZEK, WES MARTIN, THOMAS P. BRIGGS, FELICIA MUFTIC, AND TED HACKWORTH, in their official capacity as members of the Board of Equalization of the City and County of Denver; DEPARTMENT OF REVENUE OF THE CITY AND COUNTY OF DENVER; THOMAS P. BRIGGS, in his official capacity as Manager of the Department of Revenue of the City and County of Denver; and MARY ANNE MAURER, in her official capacity as the Property Tax Administrator of the State of Colorado.

Petitioners,

v.

AMERICAN AIRLINES, INC.; CONTINENTAL AIRLINES, INC.; DELTA AIRLINES, INC.; EASTERN AIRLINES, INC.; FRONTIER AIRLINES, INC.; OZARK AIRLINES, INC.; REPUBLIC AIRLINES, INC.; TEXAS INTERNATIONAL AIRLINES, INC.; TRANS WORLD AIRLINES, INC.; UNITED AIRLINES, INC.; AND WESTERN AIRLINES, INC.,

Respondents.

Certiorari to the Colorado Court of Appeals

EN BANC JUDGMENT REVERSED

Stephen H. Kaplan, City Attorney
Robert F. Strenski, Assistant City Attorney
Denver, Colorado

Attorneys for Petitioners

Holland & Hart
William E. Murane
Alan Poe
John R. Maxfield
Denver, Colorado

Attorneys for Respondents

Semple & Jackson, P.C.
Michael H. Jackson
Dwight L. Pringle
Denver, Colorado

Attorneys for Amicus Curiae
School District No. 1

CHIEF JUSTICE QUINN delivered the Opinion of the Court.

The question in this case is whether section 532(b) of the Tax Equity and Fiscal Responsibility Act of 1982,[1] codified at 49 U.S.C. § 1513(d) (1982), which was signed into law on September 3, 1982, and prohibits state taxing authorities from taxing air carrier transportation property differently from other commercial and industrial property in the same assessment jurisdiction, is applicable to the 1982 Colorado property taxes assessed on the property of eleven airline companies and levied and collected by Colorado taxing authorities. In *American Airlines, Inc. v. State Board of Equalization*, 749 P.2d 986 (Colo. App. 1988), the court of appeals held that 49 U.S.C. § 1513(d) applied to the 1982 Colorado property taxes because the taxes were based on disparate assessment values and the actual collection of the taxes occurred subsequent to the effective date of the federal legislation. We reach a contrary result. We construe 49 U.S.C. § 1513(d) as applying only to the levy and collection of taxes based on assessments made on or after September 3, 1982, the effective date of the federal legislation. Since the assessments in this case were completed prior to the effective date of the federal statute and were made in accordance with then existing Colorado law, the provisions of 49 U.S.C. § 1513(d) did not prohibit Colorado taxing authorities from levying and collecting the taxes so assessed. We accordingly reverse the judgment of the court of appeals.

I.

The petitioners are the State Board of Assessment Appeals, the State Board of Equalization, the Denver Board of Equalization, the Denver Department of Revenue, the individual members of those taxing entities, the State Property Tax Administrator, and the Manager of the Denver

---

[1] The Tax Equity and Fiscal Responsibility Act is a comprehensive bill which includes Title V, the Airport and Airway Improvement Act of 1982, of which section 532(b) is a part. Pub. L. No. 97-248, 96 Stat. 701 (1982).

Department of Revenue. The respondents are the following eleven corporate airline companies, each of which is subject to the payment of 1982 Colorado property taxes: American Airlines; Continental Airlines; Delta Airlines; Eastern Airlines, Frontier Airlines; Ozark Airlines; Republic Airlines; Texas International Airlines; Trans World Airlines; United Airlines; and Western Airlines. Before outlining the facts, we summarize the statutory framework out of which this case arises.

A.

By statute, the official assessment date for all taxable property in the state, both real and personal, is twelve noon on the first day of January of each year. § 39-1-105, 16B C.R.S. (1982 & 1988 Supp.). Property located within the state at that time and date must be appraised and valued for assessment in the county wherein it is located on the assessment date. *Id.*

In 1982 the Colorado property tax statutes distinguished certain types of property for purposes of valuation. This was accomplished by applying different base-year levels of value to some properties, including the property of public utilities. The term "public utility" included every company doing business in this state as an airline company. § 39-4-101(2.5), 16B C.R.S. (1982). In determining the value of a public utility for purposes of 1982 property taxes, the public utility's actual 1982 value was adjusted by the state Property Tax Administrator (hereinafter referred to as administrator) to its level of value in 1981, § 39-4-102(3) (a), 16B C.R.S. (1982), [2] while

[2] Section 39-4-102(1), 16B C.R.S. (1982), authorized the administrator to determine the actual value of public utility property, such as the property of an airline company, by considering the following factors and assigning such weight to them as will secure a just value of the public utility as a unit:

(footnote continues)

other commercial and industrial property, not subject to specific statutory valuation, was adjusted to its 1973 level of value pursuant to section 39-1-104(9)(a), 16B C.R.S. (1982). Although airline property was valued at a more current level of value than the value applicable to other commercial and industrial property, the statutory valuation rate applicable to both types of property was the same. Once the levels of value were adjusted to their respective base years, the valuations for assessment for both airline and other commercial and industrial properties were determined by multiplying the adjusted levels of value by 30%. Section 39-1-104(1), 16B C.R.S. (1982), in this respect, provided as follows:

> Except when otherwise prescribed in articles 1 to 13 of this title, the valuation for assessment of all taxable property in the state shall be thirty percent of the actual value thereof as determined by the assessor and the administrator in the manner prescribed by law, and such percentage shall be uniformly applied, without exception, to the actual value, so determined, of the various classes and subclasses of real and personal property located within the territorial limits of the authority levying a property tax . . . .

(footnote continued)

(a) The tangible property comprising its plant, whether the same is situated within this state or both within and without this state, exclusive of any tangible property situated without this state which is not directly connected with the business in which such public utility is engaged within this state;

(b) Its intangibles, such as special privileges, franchises, contract rights and obligations, and rights-of-way;

(c) Its gross and net operating revenues during a reasonable period of time not to exceed the most recent five-year period, capitalized at indicative rates;

(d) The average market value of its outstanding securities during the preceding calendar year, if such market value is determinable.

Colorado's statutory scheme requires the state tax administrator, not later than the first day of June in each year, to advise both the county assessor and the public utility of the amount of valuation for assessment of public utility property in the county. § 39-4-107, 16B C.R.S. (1982). The amount of valuation is then entered on the tax roll of the county by the county assessor. *Id.* Not later than July 1 of the same year, a public utility may file a petition with the administrator objecting to the valuation on the basis that the actual value of its property and plant as determined by the administrator is illegal, erroneous, or not uniform with the actual value of like property similarly situated. § 39-4-108(1), 16B C.R.S. (1982). The administrator is required to hear evidence on the petition and to render a decision in writing not later than the first day of August. § 39-4-108(4) & (5), 16B C.R.S. (1982). If the petition is granted, the administrator must make appropriate corrections or changes in the valuation for assessment of the public utility property, or in the apportionment thereof, and is required to certify the corrections or changes to the respective county assessor. § 39-4-108(6), 16B C.R.S. (1982). If, on the other hand, the administrator denies the petition, the party adversely affected by the administrator's decision may appeal to the State Board of Assessment Appeals not later than thirty days after the administrator's decision. §§ 39-4-108(8) and 39-2-125(1)(b)(I), 16B C.R.S. (1982). The decision of the Board of Assessment Appeals is subject to judicial review in the District Court of the City and County of Denver. § 39-4-109(2), 16B C.R.S. (1982). [3]

---

[3] In the case of a petition for judicial review by a public utility, the utility is required to pay the full amount of all taxes levied upon the valuation for assessment prior to filing the petition for judicial review. § 39-4-109(2), 16B C.R.S. (1982). If the petition for judicial review is sustained, then, upon presentation to the county treasurer of a certified copy of the order modifying the assessment valuation, the treasurer must forthwith make the appropriate refund of taxes, together with interest at the rate of 6% per annum from the date of payment. § 39-4-109(3), 16B C.R.S. (1982).

Not later than August 10 of each year, the county assessor is required to prepare an abstract of assessment listing the value of all taxable property located within the county. § 39-5-123(1), 16B C.R.S. (1982). The administrator must review the abstract of assessment, and if any of the various classes or subclasses of real and personal property located within the county have not been valued as required by law, the administrator is required to determine the amount of increase or decrease in valuation necessary to conform to the requirements of law and to file a complaint with the State Board of Equalization specifying the amount recommended to be added to or deducted from the valuation for the following taxable year. § 39-2-115(2), 16B C.R.S. (1982). If the administrator determines that various classes or subclasses of real and personal property have been properly valued for assessment purposes, the administrator must transmit the abstracts of assessment to the State Board of Equalization not later than the second Monday in September of each year. § 39-2-115(3), 16B C.R.S. (1982). Not later than the fourth Monday in September of each year, the State Board of Equalization is required to complete its review of the abstracts of assessment of the several counties, and the state auditor must thereupon certify to the assessor of each county a statement of any changes ordered by the board for the current taxable year, as well as for the next succeeding taxable year, and also to return the abstracts of assessment for the current taxable year to each county. § 39-9-105(1), 16B C.R.S. (1982).

The Colorado taxing authorities were following the above statutory scheme for 1982 property taxes when 49 U.S.C. § 1513(d) was enacted into law as part of the Tax Equity and Fiscal Responsibility Act of 1982. The federal law became effective on September 3, 1982, when it was signed by President Reagan. *See* Pub. L. No. 97-248, § 523, 96 Stat. 671, 695 (1982); Acts Approved by the President, 1982 *Public Papers of the Presidents of the United States* 1699,

1700 (Appendix D). 49 U.S.C. § 1513(d) (1) provides as follows:

> (1) The following acts unreasonably burden and discriminate against interstate commerce and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:
>
> (A) assess air carrier transportation property at a value that has a higher ratio to the true market value of the air carrier transportation property than the ratio that the assessed value of other commercial and industrial property of the same type in the same assessment jurisdiction has to the true market value of the other commercial and industrial property;
>
> (B) levy or collect a tax on an assessment that may not be made under subparagraph (A) of this paragraph; or
>
> (C) levy or collect an ad valorem property tax on air carrier transportation property at a tax rate that exceeds a tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

49 U.S.C. § 1513(d) (2) defines the following terms used in subsection (1):

> (A) "assessment" means valuation for a property tax levied by a taxing district;
>
> (B) "assessment jurisdiction" means a geographical area in a State used in determining the assessed value of property for ad valorem taxation;
>
> (C) "air carrier transportation property" means property, as defined by the Civil Aeronautics Board, owned or used by an air carrier providing air transportation;
>
> (D) "commercial and industrial property" means property, other than transportation property and land

used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use and subject to a property tax levy.

B.

There is no dispute as to the essential facts of this case. The administrator determined the 1982 value of each airline company's operating property and plant as of January 1, 1982, adjusted the 1982 value to its level of value in 1981 by applying an equalization factor of 93%, then multiplied the adjusted level of value by 30% — the uniform percentage for determining the valuation of all property in the state — and apportioned the assessed value among the counties in proportion to the airlines' properties located in each county. *See* §§ 39-1-104(1), 39-4-102, and 39-4-106, 16B C.R.S. (1982). This procedure resulted in a 27.9% ratio of assessed valuation to market value for airline property with respect to 1982 property taxes, while if 49 U.S.C. § 1513(d) had been applied to the 1982 tax year the assessment ratio for airline property would have been 14%.[4]

On May 26, 1982, the administrator notified the airlines and the county assessors of the assessed valuation attributable to each airline. § 39-4-107, 16B C.R.S. (1982). Five of the airlines (Continental, Frontier, Texas International, Trans

---

[4] In the airlines' subsequent appeals to the Board of Assessment Appeals, the administrator testified that she determined the 1982 assessed value of airline property by first multiplying the 1982 value by the equalization factor of 93% and thereby obtained its 1981 value, and then by multiplying the 1981 value by 30% in order to obtain the valuation for assessment. The result was an assessment ratio of 27.9% for airline property. The administrator also testified that if 49 U.S.C. § 1513(d) applied to the 1982 tax year, the assessment ratio for airline property would be 14%. The 14% figure was reached by multiplying 48% — the percentage necessary to reduce the 1982 value of commercial and industrial property to the 1973 level — by 30%, which was the percentage used for the valuation for assessment of all taxable property in the state pursuant to section § 39-1-104(1), 16B C.R.S. (1982).

World, and United) objected to the 1982 valuations, while the other airlines did not. The five objecting airlines filed petitions with the administrator on or before July 1, 1982. § 39-4-108(1), 16B C.R.S. (1982). A hearing was held before the administrator, who thereafter issued notices of adjusted valuation on July 30, 1982. § 39-4-108(5), 16B C.R.S. (1982). None of the five airlines or the counties appealed the administrator's adjusted valuations to the Board of Assessment Appeals. *See* § 39-4-108(8), 16B C.R.S. (1982).

Upon receiving the notices of valuation and adjusted valuation for the airlines, the county assessors entered the amounts of valuation on the county tax rolls, § 39-4-107, 16B C.R.S. (1982), and after review by their respective County Boards of Equalization, § 39-8-102(1), 16B C.R.S. (1982), the county assessors prepared abstracts of assessment listing the value of all taxable property located in their counties and filed the abstracts with the administrator prior to August 10, 1982. *See* §§ 39-2-115(1) and 39-5-123(2), 16B C.R.S. (1982). The administrator examined the abstracts prepared by the county assessors, §§ 39-2-115(2) and 39-5-124(2), 16B C.R.S. (1982), and the State Board of Equalization then reviewed the valuations for assessment upon the various classes and subclasses of property in each county pursuant to section 39-9-103(1), 16B C.R.S. (1982). On September 21, 1982, the State Board of Equalization approved the abstracts of assessment for 1982 prepared by the respective county assessors. *See* § 39-9-105, 16B C.R.S. (1982).

The City and County of Denver, where a large portion of the airlines' properties was situated, determined the airlines' tax liabilities by multiplying a uniform tax rate mill levy of 89.261 mills to the valuations for assessment, and informed the airlines that their 1982 tax liabilities to Denver County was due by April 30, 1983, or could be paid in two installments in February and July of 1983. *See* § 39-10-104(1) (a), 16B C.R.S. (1982). All eleven airline companies made their

installment payments on the amounts due to Denver County in February and July of 1983.

On July 25, 1983, almost eleven months after the enactment of 49 U.S.C. § 1513(d), the eleven airline companies filed petitions with the Denver Board of Equalization, sitting as a board of county commissioners, for abatement or refund of their 1982 property taxes paid to Denver County on the basis that the federal statute prohibited Denver County from assessing 1982 property taxes against airline property at a higher assessment ratio than that applied to other commercial and industrial property in the same assessment jurisdiction, and from levying and collecting the taxes so assessed. The Denver Board of Equalization denied the airlines' petitions for abatement or refund on November 21, 1983, and the airlines appealed to the State Board of Assessment Appeals.

The various appeals were consolidated for hearing before the State Board of Assessment Appeals, which then consisted of only two members, rather than three, because a vacancy on the board had not yet been filled by appointment of the Governor. *See* § 39-2-123(2), 16B C.R.S. (1982). One member voted to deny the airlines' requests for a refund, reasoning that 49 U.S.C. § 1513(d) did not become effective until September 3, 1982, and was thus not retroactively applicable to taxes assessed prior to the effective date of the statute. The other board member voted to grant a refund because as of September 3, 1982, the effective date of 49 U.S.C. § 1513(d), the process of determining actual value, including the equalization phase of the taxing scheme, had not yet been completed. Because the two-member board did not reach a majority decision, the appeals of the airline companies were denied. *See* § 39-2-127(2), 16B C.R.S. (1982).

The airline companies filed petitions for judicial review in the Denver District Court.[5] After consolidating all the petitions into one proceeding, the district court ruled that 49 U.S.C. § 1513(d) did not apply to the 1982 tax liabilities of the airlines because the valuations for those taxes were made prior to the effective date of the federal statute and were in accordance with the then existing Colorado law. The airlines appealed to the court of appeals, which reversed the judgment of the district court, concluding that 49 U.S.C. § 1513(d)(1) was applicable to the 1982 property taxes assessed against the airlines and that the federal statute was violated because the 1982 disparate market values for airline property, on the one hand, and for other commercial and industrial property, on the other, "resulted in a significantly higher tax burden on the airlines." *American Airlines. Inc.*, 749 P.2d at 989. We thereafter granted the taxing authorities' petition for certiorari in order to consider whether 49 U.S.C. § 1513(d) is applicable to the 1982 property taxes assessed against and paid by the airline companies.[6]

II.

At the outset of our analysis, it will be helpful to state briefly what this case is not about and then outline the operative principles applicable to our resolution of the issue before us.

---

[5] Simultaneously with their filing of appeals in the district court, the airlines filed petitions with the State Board of Equalization, requesting the board to determine whether it had jurisdiction over the airlines' challenges to the assessments. The Board of Equalization ruled that it would not accept jurisdiction over the airlines' challenges.

[6] We also granted the taxing authorities' petition to consider whether the application of 49 U.S.C. § 1513(d) to the 1982 taxes assessed against the airline companies would amount to an unconstitutional usurpation of state sovereignty in violation of the Tenth Amendment to the United States Constitution. Because we find that § 1513(d) does not apply to the 1982 property taxes assessed against the airline companies, we need not and do not address the constitutional claim raised by the taxing authorities.

A.

The taxing authorities and the airlines do not dispute the proposition that Colorado's 1982 property tax scheme set the valuation of air carrier transportation property at a 1981 value, rather than the 1973 value applicable to other commercial and industrial property, and to that extent assessed air carrier transportation property at a value that had a higher ratio to the true market value of air carrier transportation property than the ratio applicable to other commercial and industrial property. Nor is it disputed that 49 U.S.C. § 1513(d) is binding on the state of Colorado under the Supremacy Clause, U.S. Const. art. VI, for tax years subsequent to the effective date of the federal statute. Nor, finally, is any claim made that the refusal of the taxing authorities to apply 49 U.S.C. § 1513(d) to the 1982 tax year denied the airline companies due process or equal protection of the laws. Rather, the dispute in this case centers on whether the airlines are entitled to a refund of their 1982 property taxes by reason of the applicability of 49 U.S.C. § 1513(d) to taxes assessed prior to the effective date of the statute but levied and collected subsequent to the date of the statutory enactment. [7] Resolution of that question involves a matter of statutory construction.

---

[7] By stipulation, the parties have agreed that if 49 U.S.C. § 1513(d) is applicable to the 1982 property taxes assessed against the airline companies, the companies would be entitled collectively to a refund of approximately $3,200,000.00. The parties have also stipulated that, although section 39-10-114(1) (a), 16B C.R.S. (1982), provides that no abatement or refund of taxes shall be made more than six years after the taxes were due, the failure of the parties to complete the available statutory processes to finally resolve this litigation within the six year period will not bar or otherwise prohibit the refund of 1982 property taxes overpaid by the airlines, plus interest as provided by law, in the event ultimate resolution of the case is in favor of the airlines.

B.

It has been stated that "the first rule of construction is that legislation must be considered as addressed to the future, and not to the past." *Union Pacific Railroad Co. v. Laramie Stock Yards Co.*, 231 U.S. 190, 199 (1913). This rule of presumptive prospective application "prevents the assigning of a quality or effect to acts or conduct which they did not have or did not contemplate when they were performed." *Id.* While a remedial statute that does not affect preexisting rights or obligations may be applied retroactively in accordance with its salutary purpose, *see generally* N. Singer, 2 *Sutherland Statutory Construction* § 41.04 (4th ed. 1986), a statute that changes the status of claims fixed in accordance with earlier law should not be applied retroactively unless the legislative purpose to do so unmistakably appears in the statute itself. *See. e.g., Claridge Apartments Co. v. Commissioner of Internal Revenue*, 323 U.S. 141 (1944) (retroactivity, even where permissible, is not favored except upon clearest legislative mandate); *Hassett v. Welch*, 303 U.S. 303 (1938) (recognizing and applying well settled rule of statutory construction that a law is presumed to operate prospectively in absence of clear expression to the contrary); *United States v. Magnolia Petroleum Co.*, 276 U.S. 160 (1928) (section 1019 of Revenue Act of 1924, which provided for refund of taxes erroneously or illegally assessed or collected, was not to be construed retroactively with respect to refunds allowed under earlier revenue act but not yet computed or paid when 1924 statute was enacted). This general prohibition against retroactive application is but a recognition of the fact that it is the normal and usual function of legislation to discriminate between past and future transactions. *Claridge Apartments Co.*, 323 U.S. at 164.

The starting point in statutory interpretation is the statutory language itself. *E.g., United States v. Turkette*, 452 U.S. 576, 580 (1981); *Touche Ross & Co. v. Redington*, 442 U.S. 560, 568 (1979). Where the statutory language is

clear and certain, the statute should be construed as written, since the function of the court in such a case is to enforce the statute according to its terms. *E.g.*, *Turkette*, 452 U.S. at 580; *Caminetti v. United States*, 242 U.S. 470, 485 (1917). Where, however, the statutory language is unclear, resort to legislative history is appropriate in order to arrive at an interpretation that effectuates legislative intent. *E.g.*, *Blum v. Stenson*, 465 U.S. 886, 896 (1984); *United States v. An Article of Drug*, 394 U.S. 784, 799 (1969); *United States v. Public Utilities Commission of California*, 345 U.S. 295, 315 (1953). Moreover, wherever practicable, a statute should be interpreted in a manner that gives effect to all its provisions, and not in a way that renders one or more of its parts inoperative. *E.g.*, *Mountain States Telephone and Telegraph Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Weinberger v. Hynson, Westcott and Dunning, Inc.*, 412 U.S. 609, 633 (1973); *United States v. Menasche*, 348 U.S. 528, 538-39 (1955).

It is with these considerations in mind that we turn to the appropriate construction of 49 U.S.C. § 1513(d).

III.

The taxing authorities argue that 49 U.S.C. § 1513(d)(1) does not apply to the 1982 tax year because as of the statute's effective date of September 3, 1982, the assessments for the 1982 property taxes were completed and the federal legislation was not intended to apply to 1982 taxes which were assessed prior to September 3, 1982, but not yet levied or collected until after the statutory enactment became effective. The airline companies, on the other hand, argue that 49 U.S.C. § 1513(d)(1) protected them against the levy and collection of the 1982 taxes because as of September 3, 1982, the process of fixing the 1982 Colorado property tax assessments had not yet been completed.

Determining the applicability of 49 U.S.C. § 1513(d)(1) to the 1982 property taxes assessed against the airlines, and

later levied and collected by the taxing authorities, requires that we address the preliminary question of whether the assessments for 1982 were completed before September 3, 1982, the effective date of the federal statute. We therefore consider that question first and then take up the applicability of subparagraphs (A), (B), and (C) of § 1513(d)(1) to the factual circumstances of this case.

A.

The "valuation for assessment" was initially determined in this case when the administrator ascertained the actual value of the property of the eleven airline companies, applied the equalization factor to the actual value, multiplied by 30%, *see* § 39-1-104(1), 16B C.R.S. (1982), and then, pursuant to section 39-4-107, 16B C.R.S. (1982), notified the counties and the airline companies on May 26, 1982, of the valuation for assessment that had been apportioned to each county. Because the airline companies had the right to challenge the valuations as illegal, erroneous, or not uniform with the actual value of like property similarly situated and to petition the administrator for a correction or change, § 39-4-108(1), 16B C.R.S. (1982), and because the administrator had the authority to grant or deny such requests, § 39-4-108(6) & (7), 16B C.R.S. (1982), the administrator's initial valuations were preliminary in nature. Six airline companies (American, Delta, Eastern, Ozark, Republic, and Western), however, did not challenge the administrator's initial valuations and, therefore, these valuations became final as of May 26, 1982. Five airline companies (Continental, Frontier, Texas International, Trans World, and United) did challenge the administrator's valuations for assessment and petitioned the administrator to correct or change the valuations, with the result that these valuations were delayed until July 30, 1982, the date on which the property tax administrator adjusted the valuations and sent out "Notices of Adjusted Valuations" to the five airline companies and the respective counties affected

by the adjusted valuations. Since the five airlines did not seek further review of the adjusted valuations by appealing to the Board of Assessment Appeals, as they had a right to do pursuant to section 39-4-108(8), 16B C.R.S. (1982), the assessment process for 1982 property taxes was finalized for these five airlines as of July 30, 1982.

The airlines, taking a different view of the assessment process, argue that the valuations for assessment were not completed until September 21, 1982, when the State Board of Equalization approved the abstracts of assessment submitted by the county assessors. *See* § 39-9-105(1), 16B C.R.S. (1982). We find this argument unpersuasive. The duties of the Board of Equalization, as applicable to this case, were outlined in article X, § 15 of the Colorado Constitution as follows:

> As may be prescribed by law, the state board of equalization shall review the valuations determined for assessment of taxes upon the various classes of real and personal property located in the several counties of the state, and shall raise, lower and adjust the same, to the end that all valuations for assessment of taxes shall be just and equalized; provided, however, that said state board of equalization shall have no power of original assessment.[8]

In contrast to assessment, which consists of placing a valuation on a particular piece of property belonging to a particular taxpayer, the duty of the State Board of Equalization is to

---

[8] In September 1982 the Board of Equalization consisted of the Governor, State Auditor, State Treasurer, Secretary of State, and Attorney General. Colo. Const. art. X, § 15, 1A C.R.S. (1980). Effective December 30, 1982, the composition of the Board was changed to the Governor or his designee, the Speaker of the House of Representatives or his designee, the President of the Senate or his designee, and two members appointed by the Governor with the consent of the Senate. The constitutional duties of the Board, however, remained substantially the same as before. Colo. Const. art X, § 15(1)(b), 1A C.R.S. (1988 Supp.).

equalize the assessed valuations of classes and subclasses of property on a statewide basis by adjusting the total valuations placed upon particular classes or subclasses of property. We recognized this distinction between assessment and equalization in *Lamm v. Barber*, 192 Colo. 511, 521, 565 P.2d 538, 545 (1977), where we stated:

> Assessment is the act of placing a value for tax purposes upon the property of a particular taxpayer. Equalization, on the other hand, is the act of raising or lowering the total valuation placed upon a class, or subclass, of property in the aggregate. Equalization deals with all the property of a class or subclass within a designated territorial limit, such as a county, without regard to who owns the individual parcels making up the class or subclass. Assessment relates to individual properties; equalization relates to classes of property collectively.

This distinction between assessment and equalization finds further support in the respective statutory responsibilities of the administrator, the county assessors, and the State Board of Equalization regarding the valuation of public utility property, including that of airline companies, at the time of the events in question. Section 39-2-109(1)(a), 16B C.R.S. (1982), imposed on the administrator the duty of valuing airline property in the manner outlined in section 39-4-102, 16B C.R.S. (1982). In contrast, the county assessor was not authorized to value airline property, but rather was required to receive the assessments made by the administrator and to enter those amounts on the tax roll. § 39-4-107, 16B C.R.S. (1982). Nor was the State Board of Equalization empowered to value airline property for assessment purposes. The board's duty was to examine and review the valuations for assessment of the various classes and subclasses of taxable real and personal property located in the several counties of the state and to raise or lower the aggregate valuation for a particular class or subclass of property. § 39-9-103(1), 16B C.R.S. (1982).

In light of the long-standing distinction between assessment and equalization, we cannot accept the airline companies' claim that the valuations for assessment were not completed until September 21, 1982, when the State Board of Equalization approved the abstracts of assessment submitted by the county assessors. On the contrary, the valuations for assessment were completed for six airline companies on May 26, 1982, when the administrator notified them and the county assessors of the valuations and the six airline companies did not thereafter challenge the valuations. In the case of the five other airline companies, the valuations for assessment were completed on July 30, 1982, when the administrator notified them and the county assessors of the adjusted valuations for assessment that resulted from the companies' challenges to the initial assessment and the companies did not seek further review of the adjusted valuation. In both instances, the valuations for assessment were completed prior to September 3, 1982, the date on which 49 U.S.C. § 1513(d) became effective.

B.

Having determined that the valuations for assessment were completed prior to September 3, 1982, the next question is whether the assessments were prohibited by 49 U.S.C. § 1513(d)(1)(A), which prohibits a state from assessing air carrier transportation property "at a value that has a higher ratio to the true market value of the air carrier transportation property" than the ratio applicable to other commercial and industrial property of the same type in the same assessment jurisdiction. The federal statute is silent on whether it was intended to apply to assessments already completed prior to September 3, 1982, or only to assessments made on or after the effective date of the statute, and our review of the legislative history yields no indication whatever of any legislative intent to accord retroactive effect to the statute. *See Joint Explanatory Statement of the Committee of Conference*, 1982

U.S. Code & Admin. News 1190, 1484 (no mention whether 49 U.S.C. § 1513(d)(1)(A) applicable to assessments made and completed prior to effective date of statute). In the absence of any manifest expression of congressional intent to accord retroactive effect to 49 U.S.C. § 1513(d)(1)(A), we decline to read such a provision into the statute.

—Colorado's right to assess, levy, and collect taxes for use in the conduct of its governmental operations is an essential attribute of its sovereignty, subject of course to the constraints of the federal constitution. *E.g., Bode v. Barnett*, 344 U.S. 583 (1953); *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819); *see Western Air Lines v. Board of Equalization of South Dakota*, 480 U.S. 123 (1987) (question of whether South Dakota tax on airline flight property constituted "in lieu" property tax within meaning of 49 U.S.C. § 1513(d)(1)(3), and thus exempt from discrimination prohibition of § 1513(d)(1), was governed by federal law). Retroactive application of subparagraph (A) of § 1513(d)(1) to the 1982 property taxes assessed on the airlines' properties would thwart Colorado's reasonable expectation of, and inchoate right to, tax revenues based on assessments made and completed in accordance with state law prior to the date on which the federal legislation came into being.

Relying on the basic rule of statutory construction that "a law is presumed, in the absence of clear expression to the contrary, to operate prospectively," *Hassett*, 303 U.S. at 314, we read the statutory prohibition against disparate assessment of air carrier transportation property as addressing future assessments not yet completed prior to September 3, 1982, rather than past assessments already made and completed. *See Arkansas-Best Freight System. Inc. v. Cochran*, 546 F. Supp. 904 (M.D. Tenn. 1981) (court construes section 31 of Federal Motor Carrier Act of 1980, which prohibits an assessment of motor carrier property at a higher ratio to true market value than the ratio applicable to other commercial

and industrial property, as applicable to all assessments actually made after the effective date of federal statute). Because the assessments in this case were completed in accordance with Colorado law prior to September 3, 1982, and because the federal statute does not provide for retroactive application, we conclude that the 1982 assessments were not prohibited by 49 U.S.C. § 1513(d)(1)(A).

C.

We next consider whether the taxing authorities were prohibited from levying and collecting the 1982 property taxes by reason of subparagraph (B) of 49 U.S.C. § 1513(d)(1), which provides that "a State or subdivision of a State may not . . . levy or collect a tax on an assessment that may not be made under subparagraph (A) of this paragraph." We conclude that the taxing authorities were not prohibited from levying and collecting on the 1982 taxes already assessed against the airlines.

When statutory language is clear and unambiguous, the statute should be enforced as written, since the statutory language itself is the best indicator of legislative intent or purpose. *See, e.g., United States v. Ron Pair Enterprises. Inc.*, No. 87-1043, slip op. at 5 (U.S. Sup. Ct. Feb.22, 1989); *Turkette*, 452 U.S. at 580; *Caminetti*, 242 U.S. at 485. Subparagraph (B) of § 1513(d)(1) unequivocally prohibits a state and its subdivisions from levying or collecting a tax on an assessment that was impermissibly made under § 1513(d)(1)(A). Subparagraph (B), as so read, is not mere statutory surplusage. On the contrary, subparagraph (B) operates as a supplement to subparagraph (A) by making explicit what would otherwise be left only to inference — namely, when a state places a valuation for assessment on air carrier transportation property that is violative of subparagraph (A), the state is prohibited from taking further action to levy or collect any taxes based on the impermissible assessment. Subparagraph (B) thus closes a statutory gap by providing a clear

sanction for assessments violative of subparagraph (A) and, to that extent, serves a function consistent with the overall structure and purpose of the statutory scheme.

It follows from our interpretation of subparagraph (B) that if an assessment does not violate subparagraph (A), then the levy and collection of a tax on such an assessment is not within the prohibition of subparagraph (B). As previously discussed, the 1982 assessments did not violate § 1513(d)(1)(A), and, consequently, the levy and collection of such taxes, even though subsequent to September 3, 1982, were not prohibited by § 1513(d)(1)(B).

D.

We next address whether the taxing authorities were prevented from levying and collecting the 1982 property taxes by virtue of subparagraph (C) of 49 U.S.C. § 1513(d)(1), which prohibits a state or its subdivision from levying or collecting an "ad valorem property tax on air carrier transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction." We conclude that the levy and collection of the 1982 taxes did not violate § 1513(d)(1)(C).

Both the taxing authorities and the airline companies concede that the 89.261 mill levy was applied to all property in Denver County, whether airline property or other commercial and industrial property. For purposes of § 1513(d)(1)(C), therefore, the 1982 "tax rate" applicable to airline property did not exceed the tax rate applicable to commercial and industrial property in Denver County. The airline companies nonetheless contend that, even though the 89.261 mill levy was the same for all property, the mill levy was merely a nominal tax rate and that § 1513(d)(1)(C) is directed at discrimination in the "effective tax rates" — *i.e.*, the rates established by comparing the ratios between the nominal tax rate and classes of properties assessed at different levels of value.

Employing this proposed construction of subparagraph (C), the airlines claim that the 1982 effective tax rate for airline property, which was assessed at a 1981 level of value, was greater than the effective tax rate applicable to other commercial and industrial property, which was assessed at a 1973 level of value. We reject the airlines' claim.

The airline companies' proposed construction of subparagraph (C) of § 1513(d)(1), in our view, would render subparagraph (B) devoid of function or purpose. Subparagraph (A) prohibits discriminatory assessments, while subparagraph (B) prohibits the levy and collection of taxes based on discriminatory assessments. If, as the airlines argue, the term "tax rate" in subparagraph (C) were to be construed to mean the "effective tax rate" resulting from a disparate assessment violative of subparagraph (A), the prohibition of subparagraph (C) would be nothing more than a mere repetition of subparagraph (B).

We decline to adopt a construction that creates a mere statutory redundancy, especially when, as here, there is a reasonable construction that gives effect to all the subparagraphs of § 1513(d)(1). *See. e.g., Pueblo of Santa Ana*, 472 U.S. at 249; *Hynson, Westcott and Dunning, Inc.*, 412 U.S. at 633; *Menasche*, 348 U.S. at 548-49. We read subparagraph (C) of § 1513(d)(1) as prohibiting the application of tax rates on airline property that exceed the authorized rates applicable to commercial and industrial property in the same assessment jurisdiction. Since the 1982 tax rate applied to airline property did not exceed the tax rate applied to other commercial and industrial property in the same assessment

jurisdiction, the levy and collection of the 1982 property taxes did not violate 49 U.S.C. § 1513(d)(1)(C).[9]

---

[9] In arguing that § 1513(d)(1)(C) prohibits differences in "effective tax rates" between airline property and other commercial and industrial property, even though the tax rates are nominally the same, the airlines rely on *Burlington Northern Railroad Co. v. Department of Revenue*, 570 F. Supp. 585 (W.D. Wis. 1983), *modified* 604 F. Supp. 1575 (W.D. Wis. 1985). In that case, the court held that Wisconsin's taxing scheme violated section 306 of the Federal Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. § 11503(b)(3) (1982), which parallels the provisions of 49 U.S.C. § 1513(d)(1)(C) and prohibits a state from levying or collecting an ad valorem property tax on rail transportation property at a rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction. We do not view the *Burlington Northern* case as persuasive authority on the question whether 49 U.S.C. § 1513(d)(1)(C) was violated under the particular circumstances of this case.

Much of the discussion in *Burlington Northern* was devoted to resolving whether the "assessment jurisdiction" for purposes of the Railroad Revitalization and Regulatory Reform Act was the State of Wisconsin or local counties and municipalities. No such question is present here, since it is undisputed that it was the City and County of Denver that levied and collected the ad valorem property tax for purposes of any arguable § 1513(d)(1)(C) violation.

Moreover, the court in *Burlington Northern* placed substantial emphasis on Wisconsin's assessment of rail transportation property at 100% of market value, while assessing other commercial and industrial property at 80% of fair market value, 604 F. Supp. at 1580-81, and on the state's omission of rail transportation property from a state tax credit system, while giving tax credits to other commercial and industrial property, 570 F. Supp. at 593. The disparate assessment in *Burlington Northern* resulted in the assessment of rail transportation property at a value that had a higher ratio to true market value than the ratio applicable to other commercial and industrial property and, to that extent, violated the disparate assessment prohibition of § 11503(b)(1) of the Railroad Revitalization and Regulatory Reform Act. 604 F. Supp. at 1580.

(footnote continues)

IV.

In summary, we hold as follows: that the 1982 Colorado property tax assessments were completed prior to September 3, 1982, the effective date of 49 U.S.C. § 1513(d); that 49 U.S.C. § 1513(d)(1)(A) does not retroactively apply to assessments completed prior to the effective date of the statute; that 49 U.S.C. § 1513(d)(1)(B) did not prohibit the levy and collection of the 1982 property taxes subsequent to the effective date of the federal legislation, since the assessments were completed prior to the effective date of the statute; and that the 1982 tax rate applicable to airline property did not exceed the tax rate applicable to other commercial and industrial property and thus did not violate 49 U.S.C. § 1513(d)(1)(C). We accordingly reverse the judgment of the court of appeals and remand the case to that court with directions to reinstate the judgment of the district court.

(footnote continued)

Finally, reading an "effective tax rate" concept into 49 U.S.C. § 1513(d)(1)(C) would require that we apply the disparate assessment provision of § 1513(d)(1)(A) retroactively to the facts of this case, for only by retroactive application could a different "effective tax rate" for airline property be established for the 1982 property taxes. As we have noted in part III B, *supra*, there is no basis for such a retroactive application of the disparate assessment prohibition of § 1513(d)(1)(A). We agree in this respect with the observation of the court in *Arkansas-Best Freight System. Inc. v. Cochran*, 546 F. Supp. 904 (M.D. Tenn. 1981). In construing section 31 of the Federal Motor Carrier Act, which parallels the text of 49 U.S.C. § 1513(d)(1)(A), the court stated that the doctrine of federal supremacy requires the application of the Motor Carrier Act in the year it took effect "as to all assessments actually made after [the statute's] effective date." 546 F. Supp. at 912.

APPENDIX B

Colorado Court of Appeals

No. 85CA1154

AMERICAN AIRLINES, INC;)
CONTINENTAL AIRLINES, INC.;)
DELTA AIRLINES, INC.;)
EASTERN AIRLINES, INC.;)
FRONTIER AIRLINES, INC.;)
OZARK AIRLINES, INC.;)
REPUBLIC AIRLINES, INC.;)
TEXAS INTERNATIONAL AIRLINES, INC.;)
TRANS WORLD AIRLINES, INC.;)
UNITED AIRLINES, INC.; and)
WESTERN AIRLINES, INC.,)
Plaintiffs-Appellants,)
v.)
STATE BOARD OF EQUALIZATION OF THE)
STATE OF COLORADO; DON EBERLE, CARL)
B. BLEDSOE, TED L. STRICKLAND, KEN-)
NETH SMITH, and C. MICHAEL CALLIHAN,)
in their official capacity as members of the)
State Board of Equalization of the State of)
Colorado; BOARD OF ASSESSMENT APPEALS)
OF THE STATE OF COLORADO; HENRY F.)
SHRIVER and F. WILLIAM BEIER, in their)
official capacity as members of the Board)
of Assessment Appeals of the State of Colo-)
rado; BOARD OF EQUALIZATION OF THE)
CITY AND COUNTY OF DENVER SITTING AS)
A BOARD OF COUNTY COMMISSIONERS;)
JOHN MROZEK, WES MARTIN, THOMAS P.)
BRIGGS, FELICIA MUFTIC and TED HACK-)
WORTH, in their official capacity as mem-)
bers of the Board of Equalization of the)

City and County of Denver; DEPARTMENT OF REVENUE OF THE CITY AND COUNTY OF DENVER; THOMAS P. BRIGGS, in his official capacity as Manager of the Department of Revenue of the City and County of Denver; and MARY ANNE MAURER, in her official capacity as the Property Tax Administrator of the State of Colorado,

Defendants-Appellees.

COURT OF APPEALS
STATE OF COLORADO
Opinion filed and judgment entered on the 27th day of August, 1987.
Clerk of the Court

Appeal from the District Court of the City and County of Denver

Honorable Edward E. Carelli, Judge

DIVISION I
Opinion by JUDGE METZGER
Pierce and Kelly, JJ., concur

JUDGMENT REVERSED AND CAUSE REMANDED WITH DIRECTIONS

Holland and Hart
William E. Murane
Alan Poe
John R. Maxfield
Denver, Colorado

Attorneys for Plaintiffs-Appellants

Stephen H. Kaplan,
City Attorney
Robert F. Strenski, Assistant City Attorney
Denver, Colorado

Attorneys for Defendants-Appellees

Plaintiffs, American Airlines, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Airlines, Inc., Frontier Airlines, Inc., Ozark Air Lines, Inc., Republic Airlines, Inc., Texas International Airlines, Inc., Trans World Airlines, Inc., United Airlines, Inc., and Western Airlines, Inc. (the airlines) appeal a judgment of the district court affirming a decision of defendant Board of Assessment Appeals (BAA), in which the BAA denied petitions for abatement or refund of taxes with respect to 1982 property taxes. We reverse and remand.

The airlines argue that since the Tax Equity and Fiscal Responsibility Act, 49 U.S.C. § 1513(d) (TEFRA), prohibited discriminatory tax assessments of airline property after September 3, 1982, the district court erred in failing to find that the manner in which taxes were levied on their property after that date violated TEFRA. The airlines also argue that the district court erred in failing to find that the assessment, levy, and collection of discriminatory taxes, in violation of TEFRA, contravened U.S. Const. art. VI, Cl. 2, the supremacy clause of the United States Constitution.

The BAA argues that this court does not have jurisdiction to hear this appeal because the airlines failed to exhaust their administrative remedies. In the alternative, the BAA argues that TEFRA was not applicable to the 1982 tax year in Colorado because the tax assessments for that year were final prior to the effective date of TEFRA. Finally, the BAA contends that application of TEFRA to the 1982 tax year is constitutionally prohibited by the Tenth Amendment because such application would be destructive of state sovereignty.

In 1982, the Colorado tax statute, § 39-1-104, C.R.S. (1982 Repl. Vol. 16B), provided that airline property, like that of other public utilities, would be taxed at 30% of the 1981 level of value. In contrast, all other commercial and industrial property was valued and assessed for the 1982 tax year at 30% of its 1973 level of value.

The Property Tax Administrator made the appropriate assessments of the airlines' property and gave notice of the assessments on or before June 1, 1982. When the notifications were received, five of the airlines protested the assessments, pursuant to § 39-4-108(1), C.R.S. (1982 Repl. Vol. 16B), and adjusted assessments were issued on or before August 1, 1982. No appeal from the decision was taken. The remaining airlines did not contest the original assessments, and all of the airlines timely paid their taxes in installments on February 28 and July 31, 1983.

On September 3, 1982, prior to the tax payments by the airlines, TEFRA was signed into law, and became effective on that date. The TEFRA provision at issue here is codified at 49 U.S.C. § 1513(d), and prohibits states from assessing, levying, or collecting an "ad valorem property tax on air carrier transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction." The parties have stipulated that the total assessment of the airlines' property for tax year 1982 would be reduced from approximately $57 million to approximately $29 million if 49 U.S.C. § 1513(d) applies.

On July 25, 1983, several days before the payment of the final tax installments, the airlines filed petitions for abatement and refund based upon the provisions of TEFRA, claiming discriminatory tax treatment. The petitions were denied by the Denver Board of Equalization. The airlines then appealed to the BAA, requesting a *de novo* hearing. After that hearing, the BAA denied the airlines' claims, thus affirming the 1982 assessments. The airlines appealed to the district court, which affirmed the BAA's decision. The court specifically found that TEFRA did not apply to the 1982 tax assessments because TEFRA contained no provision making it effective retroactively, and the assessments were complete before the effective date of TEFRA. This appeal followed.

I.

As a preliminary matter, the BAA contends that the airlines failed to exhaust their administrative remedies and that, thus, this court does not have jurisdiction. We disagree.

In *Board of Assessment Appeals v. Benbrook,* 735 P.2d 860 (Colo. 1987), our supreme court held that taxpayers may challenge a tax assessment, pursuant to § 39-1-113 and § 39-10-114, C.R.S. (1982 Repl. Vol. 16B), for an individual abatement and refund without first exhausting administrative remedies if the underlying claim is that the tax is partially illegal or erroneous, and the time for other appeals has passed. Here, the underlying claim is one of illegality, because of the asserted conflict with TEFRA. This claim did not arise until September 3, 1982, long after the time for other appeal procedures had expired. Thus, the airlines have followed the appropriate procedure, and this court has jurisdiction.

II.

The airlines contend that the assessment, levy, and collection of taxes based upon different base years, as provided in § 39-1-104, C.R.S. (1982 Repl. Vol. 16B), violated TEFRA. The district court held, and the BAA argues, that the provisions of TEFRA do not apply because the tax assessments were completed before its effective date. We agree with the airlines that the collection of the taxes violated the provisions of TEFRA.

TEFRA became effective on September 3, 1982. As of that date, all conflicting state laws were preempted pursuant to the supremacy clause of the United States Constitution. U.S. Const. art. VI, Cl. 2; *see Arkansas-Best Freight System, Inc. v. Cochran,* 546 F. Supp. 904 (M. D. Tenn. 1981). TEFRA prohibits the assessment, levy, or collection of an ad valorem property tax on air carrier transportation property in excess of the applicable rate for other commercial and industrial property.

It is undisputed that all collection of the taxes at issue here occurred after TEFRA's effective date. It is further undisputed that the taxes collected were based upon assessments at different market values: the airlines' property at its 1981 value, and all other commercial and industrial property at its 1973 value. The result of the use of these disparate market values resulted in a significantly higher tax burden on the airlines. *See Burlington Northern R.R. Co. v. Department of Revenue,* 570 F. Supp. 585 (W.D. Wis. 1983), *modified,* 604 F. Supp. 1575 (W.D. Wis. 1985).

Consequently, the provisions of TEFRA do apply, and the district court erred in affirming the decision of the BAA which denied the airlines' claims for abatement and refund.

III.

The BAA asserts that the application of TEFRA to the 1982 tax years violate the Tenth Amendment, which precludes Congress from interfering with the taxing powers of the states. However, the BAA does not argue that application of TEFRA to any succeeding year has a like effect.

The plenary power of Congress under the commerce clause, U.S. Const. art. I, § 8, cl. 3, is universally recognized. This power encompasses the regulation of commerce itself, as well as those activities affecting interstate commerce. *Heart of Atlanta Motel v. United States,* 379 U.S. 241, 85 S.Ct. 348, 13 L.Ed.2d 258 (1964). This power permits some limitation on the states' power of taxation. So long as the federal legislation is rationally related to the goal of protecting interstate commerce or the instrumentalities thereof, the fact that a state taxation system is affected does not itself invalidate the legislation. *Arizona Public Service Co. v. Snead,* 441 U.S. 141, 99 S.Ct. 1629, 60 L.Ed.2d 106 (1979).

In enacting TEFRA, Congress stated that assessing air carrier transportation property at higher ratios of true market value or taxing it at higher rates than other commercial and industrial personal property unreasonably burdens interstate

commerce. Congress intended to prohibit states from subjecting air carriers to discriminatory tax treatment. *Aloha Airlines, Inc. v. Director of Taxation,* 464 U.S. 7, 104 S.Ct. 291, 78 L.Ed.2d 10 (1983); *Northwest Airlines, Inc. v. State Board of Equalization,* 358 N.W.2d 515 (N.D. 1984).

States do have an interest in collecting the greatest amount of tax revenue possible and in maintaining property classification for taxation purposes. These are legitimate and vital state interests. *Arkansas-Best Freight System, Inc. v. Cochran, supra.* However, contrary to the BAA's assertions, TEFRA does not completely prohibit the collection of taxes from the airlines, nor does it undermine the state's property classification system. Rather, it merely requires that air transportation property taxes be based upon the same rates as other commercial and industrial property.

The tax provision of TEFRA is not unique. Congress has exercised its commerce clause power in a similar fashion to alleviate discrimination in taxation for other interstate carriers. *See, e.g.,* Motor Carrier Act of 1980, 49 U.S.C. § 11503a; Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. § 11503. Challenges to these acts on Tenth Amendment grounds have been rejected. *Tennessee v. Louisville & Nashville R.R. Co.,* 478 F. Supp. 199 (M.D. Tenn. 1979) *aff'd* 652 F.2d 59 (6th Cir.), *cert. denied,* 454 U.S. 834, 102 S.Ct. 135, 70 L.Ed.2d 114 (1981); *Arkansas-Best Freight System, Inc. v. Cochran, supra.*

Consequently, since the provisions of TEFRA apply to the assessments here, the district court erred in affirming the decision of the BAA which denied the airlines' claims for abatement and refund.

The judgment is reversed and the cause is remanded for further proceedings consistent with the views expressed in this opinion.

JUDGE PIERCE and JUDGE KELLY concur.

APPENDIX C

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

Civil Actions 84CV4505 through
84CV4515 & 84CV6469
Court Room 2

COURT'S RULING

AMERICAN AIRLINES, INC., et al.,

Plaintiffs-Petitioners,

vs.

BOARD OF ASSESSMENT APPEALS OF THE STATE OF COLORADO, et al.,

Defendants-Respondents.

This matter came on to be heard pursuant to a complaint and petition for review from a decision of the Board of Assessment Appeals of the State of Colorado.

The plaintiffs were represented by Mr. Alan Poe and Mr. Gregory B. Cairns and the defendants' interests were represented by the City Attorney in and for the City and County of Denver, by and through Assistant City Attorney, Mr. Robert Strenski.

The court, now having reviewed the complaint, the transcript of the record, including the exhibits admitted therein, the briefs of counsel and statements and arguments of counsel, enters the following decision.

This case involves the valuation of the various airlines' property for the 1982 tax year. The airlines who are plaintiffs herein are included within the definition of "public utility" as

set forth in the Colorado statutes. Thus the valuation of airlines' property in Colorado for the 1982 tax year is governed by the provisions of C.R.S. 39-4-101, *et seq.*

In Colorado the valuation of the airlines' property throughout the State is centrally determined by the Colorado Property Tax Administrator. For the 1982 tax year, the Property Tax Administrator valued the various airlines' property pursuant to the provisions of Section 39-4-106(6) of the Colorado Revised Statutes.

The airlines were duly notified of the valuation on or before June 1st of 1982. Five of the airlines, namely, Frontier, Texas International, Continental, United and Trans-World, protested the 1982 valuations, pursuant to the provisions of the statutes in such case made and provided, in July of 1982 and the remaining airlines apparently accepted the valuations determined by the Property Tax Administrator.

The Property Tax Administrator decided the cases for the five protesting airlines on or before August 1, 1982. The remaining airlines apparently were satisfied with the valuations by the Property Tax Administrator, in that they did not pursue the statutory procedures which were available to them and did not follow the procedures for appealing any decision of the Property Tax Administrator within the 30 days allotted them.

Thereafter, the airlines made no further appeal of the 1982 valuations of the Property Tax Administrator.

Whereupon, the Property Tax Administrator apportioned the valuation of the airlines' property among the several counties in the State in which the airlines' property was located. The Property Tax Administrator notified the counties, which, of course, included Denver, of the valuation apportioned to each for purposes of levying the property tax.

The Property Tax Administrator duly notified Denver of its portion of the airlines' property valuation on or before July 30, 1982, and the airlines did, in fact, pay the property

tax based upon the 1982 valuations determined by the Property Tax Administrator.

That on or about July 25, 1983, the airlines filed petitions for refund of the 1982 property taxes with the Denver Board of County Commissioners, claiming that the valuation of their personal property was too high and requested a refund for the tax on the excess valuation.

The basis of the claim was that on September 3, 1982, President Reagan signed the Tax Equity and Fiscal Responsibility Act, more specifically, Section 49 U.S.C. § 1513(d), prohibiting the airlines' property from being valued in excess of other comparable commercial and industrial property.

The above-mentioned petitions were denied by the Denver Board of County Commissioners.

Whereupon, the airlines appealed the Board of County Commissioners' decision to the Board of Assessment Appeals, requesting a de novo hearing of their claim. The petitions were consolidated for hearing before the Board of Assessment Appeals.

The Board of Assessment Appeals denied the airlines' claim, which, in effect, affirmed the 1982 valuations determined by the Property Tax Administrator which was apportioned to Denver. The several airlines appealed the decision to this court.

This court affirms the findings and conclusions of the Board of Assessment Appeals and in doing so specifically finds that the statute which was adopted by Congress and signed into law September 3, 1982, namely Section 1513(d) (1) (A), does not have retroactive application.

The court concludes that there is a presumption that all statutes which are adopted should be given prospective application, unless there is a clear intent that the statute should be given retroactive effect.

The court further concludes that since the taxes for 1982 were valued in accordance with the then existing Colorado law, the valuations were valid and according to the provisions relating to Section 1513(d) (1) (A), which provides that no State or subdivision of the State may assess air carrier transportation property at a value that has a higher ratio to the true market value of the air carrier transportation property than the ratio that the assessed value of other commercial and industrial property of the same type in the same assessment jurisdiction has to the true market value of the other commercial and industrial property, and said statute has no application for property valued prior to its adoption.

The plaintiffs contend that Section 1513(d) (1) (B) makes it unlawful to levy or collect a tax on an assessment that may not be made under subparagraph (A). It is clear from the record that the valuations were complete prior to the effective date of Section 1513(d) and that assessment was valid for all intents and purposes.

Accordingly, the court concludes that Section 1513(d) (1) (B) is inapplicable herein.

Accordingly, the court finding no error, the judgment of the Colorado Board of Assessment Appeals is affirmed.

DONE at Denver, Colorado, this 14th day of May, 1985.

BY THE COURT:

/s/ EDWARD E. CARELLI

EDWARD E. CARELLI
District Judge

APPENDIX D

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

Civil Action Nos 84CV4505 through 84CV4515 & 84CV6469
Court Room 2

AMENDMENT OF COURT'S RULING

AMERICAN AIRLINES, INC., et al.,

Plaintiffs-Petitioners,

vs.

BOARD OF ASSESSMENT APPEALS OF THE STATE OF COLORADO, et al.,

Defendants-Respondents.

This matter comes before the court pursuant to a motion filed on behalf of the plaintiffs-petitioners for amendment of the court's ruling.

The court, now having reviewed same, orders that the ruling be amended to state that the plaintiffs-petitioners were represented by William E. Murane and John R. Maxfield.

It is further ordered that its ruling and judgment be amended as follows: The court finds that the opinions of the members of the Colorado Board of Assessment Appeals did not, in effect, enter judgment. However, the effect of the same was to affirm the decision of the County Board in denying the petitions' request for abatement or refund of taxes.

The decision previously rendered will remain in effect as to all other matters contained therein.

DONE at Denver, Colorado, this 6th day of June, 1985.

BY THE COURT:

/s/ EDWARD E. CARELLI

EDWARD E. CARELLI
District Judge

APPENDIX E

BOARD OF ASSESSMENT APPEALS

STATE OF COLORADO

Docket Numbers 4668 through 4680

AMERICAN AIRLINES, INC.,	)	
WESTERN AIRLINES, INC.,	)	
UNITED AIRLINES, INC.,	)	
TRANSWORLD AIRLINES, INC.,	)	
REPUBLIC AIRLINES, INC.,	)	
PIEDMONT AVIATION, INC. d/b/a PIEDMONT AIRLINES,	)	
OZARK AIR LINES, INC.,	)	
FRONTIER AIRLINES, INC.,	)	MEMBER SHRIVER'S
EASTERN AIRLINES, INC.,	)	OPINION
DELTA AIR LINES, INC.,	)	
TEXAS INTERNATIONAL AIRLINES, INC., and	)	
CONTINENTAL AIRLINES, INC.,	)	
Petitioners,	)	
vs.	)	
DENVER COUNTY BOARD OF COMMISSIONERS,	)	
Respondent.	)	

THIS MATTER coming on to be heard before the Board of Assessment Appeals on March 16 and April 9, 1984, and Henry F. Shriver and F. William Beier being in attendance and having received evidence and heard statements of counsel, and being fully advised in the premises,

MEMBER SHRIVER FINDS:

1. This matter has been properly brought before this Board on the petitions of Petitioners.

2. Proper notice has been given to all parties concerned.

3. Petitioners were represented by Alan Poe, Esq.

4. Respondent was represented by Robert F. Strenski, Esq.

5. Subject properties are described as set forth in Attachment 1.

6. Counsel for the Respondent, Mr. Robert F. Strenski, moved for dismissal of the appeals on the grounds that the case involves 1982 valuations which were placed on the respective properties by the Property Tax Administrator prior to June 1, 1982.

7. He stated that five of the Petitioners had appealed during the statutory time frame, and the remaining Petitioners did not. The Property Tax Administrator made adjustments on the valuations which were appealed to her, and those Petitioners carried their appeals no further until they filed for refunds under C.R.S. 39-1-113 and 39-10-114 in July 1983. The resulting mill levies were laid, the taxes were collected, and those revenues were distributed.

8. Mr. Strenski stated that, as a result of the hearings held by the Denver County Board of Commissioners on the requests for refunds, that board determined the issue to be one of valuation and, because all administrative remedies were not timely exhausted by the Petitioners, the board of county commissioners denied the appeals.

9. He contended that, as a result of the board of commissioner's action, this Board lacked authority to accept jurisdiction in the matter, and should dismiss the petitions.

10. Counsel for the Petitioners, Mr. Alan Poe, stated that federal legislation (TEFRA) was enacted September 3, 1982, which prohibited the levying or collection of taxes on airline properties that were valued differently than other commercial and industrial properties in the area.

11. He stated that the assessments or valuations were arrived at by using a different assessment ratio than that used for railroad properties.

12. Mr. Poe stated that the Petitioners were unaware of the federal legislation during the statutory time frame for appeals of valuations, and cited *Modular Communities, Inc. v. Allan R. McKnight*, 550 P.2d 866 (1976), in support of this argument.

13. He further stated that the assessment procedures were not completed until the State Board of Equalization certified the abstract on September 14, 1982, which was subsequent to the enactment of the federal legislation.

14. The Board denied the Respondent's motion, and accepted jurisdiction under C.R.S. 39-2-125(F).

15. Counsel for the Petitioners contended that the federal legislation which was enacted on September 3, 1982, was effective as of that date and must be properly considered in the valuation of airline properties for tax year 1982.

16. Counsel for the Respondent argued that this federal legislation was effective for tax year 1983 and subsequent to that time, but not for tax year 1982, in the valuation of airline properties.

17. Ms. Mary Anne Maurer, Property Tax Administrator, testified that in valuing the subject properties for tax year 1982, she used a 93 percent factor to roll back the values to tax year 1981, and then applied a 30 percent factor to arrive at the assessed valuations.

18. She stated that five of the Petitioners appealed their valuations during the protest period of July 1982, and were given adjustments; they appealed no further. The remaining eight Petitioners did not appeal to her in July 1982.

19. Ms. Maurer stated that it was her determination that TEFRA did prohibit discriminatory valuations, and that it was applicable for the valuations of airline properties for tax

year 1983, but not for tax year 1982. She also stated that she received an informal opinion from the Attorney General's Office, but that it did not directly address the issue.

20. Mr. Max P. Arnold, president of Max P. Arnold Associates, was accepted by the Board as an expert witness in the field of appraisals. He testified that he was commissioned to make a study of the 1979, 1980, and 1981 sales ratio to determine the proper procedures to use in valuing railroad properties. He included all 63 counties in the State of Colorado in his study. The commercial and industrial real properties were the main source of his study. By factoring these forward, he arrived at the 1982 value, and the resulting standards were adopted by the Property Tax Administrator and the railroad companies to determine the ratio to be used for valuing the railroad properties.

21. Mr. Arnold stated that public utility property was not included in his study unless it was locally-assessed and sold; in his opinion, it should not have been used or included in the standards. The approximate factor used in assessing railroad properties in 1982 was 14 percent. As a result of his study, Mr. Arnold determined that this factor should have been 10.91 percent; one of the principal reasons for the difference was the fact that Mr. Arnold did not include public utility property, which the Division of Property Taxation did include.

22. Counsel for the Respondent again moved for dismissal on the grounds that the Petitioners had failed to meet the burden of proof in accordance with the Board's Rule 14. He also renewed his contention that the Board lacked jurisdiction.

23. Counsel for the Petitioners repeated several of his remarks made in response to the previous motion, together with the fact that Mr. Arnold's testimony had proven the correct sales ratio which should have been used in valuing the subject properties for tax year 1982 at 10.91 percent.

24. The Board denied the Respondent's motion.

25. Ms. Maurer testified that public utilities have the right to appeal their valuations to her during July of each year, and her decisions to the Board of Assessment Appeals within 30 days of that date. None of the 13 Petitioners in the instant case appealed her decision within the 30-day time frame. She knows of no statutory authority permitting her to change a valuation subsequent to the last working day in July, unless ordered to do so by a higher authority.

FINDINGS:

The subject properties were valued for tax year 1982 by the use of the same methodology and procedures as were used to value all other public utilities, with the exception of railroad properties.

The formula used in valuing the subject properties was a 93 percent factor to roll back the value to tax year 1981, and then a 30 percent factor to determine the assessed valuations. In the instance of railroad properties, a 14 percent factor of the tax year 1982 level of value resulted in the assessed valuations.

CONCLUSIONS:

The first issue to be resolved was to determine if TEFRA was to be considered as applicable to tax year 1982.

As of the September 3, 1982 date in which TEFRA was signed into law, the Respondent had neither levied the tax, nor had the tax been collected from the Petitioners. The State Board of Equalization certified the abstract on September 14, 1982.

The Assessment date for public utility properties, such as the subject properties, was January 1 of the assessment year. Should TEFRA be determined to be applicable to tax year 1982, it would be applied retroactively. No mention in

the Act, which was a part of Respondent's Exhibit I, showed the legislation to be effective as of January 1, 1982.

Section 532(b) of the Tax Equity and Financial Responsibility Act (TEFRA) of 1982 should not be used in the valuation of the subject properties for tax year 1982.

Member Shriver moved that the action of the Respondent be affirmed and the petitions be denied. Because the motion was not seconded, the motion was lost.

ORDER:

In accordance with C.R.S. 39-2-127(2), since there was not a majority decision of the Board, the Petitioners' appeals cannot be granted.

DATED this 13th day of April, 1984.

BOARD OF ASSESSMENT
APPEALS

/s/ HENRY F. SHRIVER

Henry F. Shriver, Chairman

APPENDIX F

BOARD OF ASSESSMENT APPEALS

STATE OF COLORADO

Docket Numbers 4668 through 4680

AMERICAN AIRLINES, INC.,	)	
WESTERN AIRLINES, INC.,	)	
UNITED AIRLINES, INC.,	)	
TRANSWORLD AIRLINES, INC.,	)	
REPUBLIC AIRLINES, INC.,	)	
PIEDMONT AVIATION, INC.	)	
D/B/A PIEDMONT AIRLINES,	)	
OZARK AIR LINES, INC.,	)	
FRONTIER AIRLINES, INC.,	)	MEMBER BEIER'S
EASTERN AIRLINES, INC.,	)	OPINION
DELTA AIR LINES, INC.,	)	
TEXAS INTERNATIONAL AIRLINES,	)	
INC., and	)	
CONTINENTAL AIRLINES, INC.,	)	
Petitioners,	)	
vs.	)	
DENVER COUNTY BOARD OF	)	
COMMISSIONERS,	)	
Respondent.	)	

THIS MATTER coming on to be heard before the Board of Assessment Appeals on March 16 and April 9, 1984, and Henry F. Shriver and F. William Beier being in attendance and having received evidence and heard statements of counsel, and being fully advised in the premises,

MEMBER BEIER FINDS:

1. This matter has been properly brought before this Board on the petitions of Petitioners.

2. Proper notice has been given to all parties concerned.

3. Petitioners were represented by Alan Poe, Esq.

4. Respondent was represented by Robert F. Strenski, Esq.

5. Subject properties are described as set forth in Attachment 1.

6. Counsel for the Respondent moved to dismiss the appeals on the grounds that the Petitioners had failed to exhaust their administrative remedies within the time period provided by statute under C.R.S. 39-4-108(1) and 39-4-108(4).

7. Counsel for the Respondent contended that the Board of Assessment Appeals is without jurisdiction, as the Petitioners have lost their right of appeal. The Property Tax Administrator adjusted valuations for the five protesting airlines, but they were appealed no further. In July 1983, the Denver County Board of Commissioners denied the request for review for lack of jurisdiction.

8. The Petitioners contend the applicability of Section 532(b) of the TEFRA Act. The Attorney General's opinion of April 13, 1983, deemed it inappropriate for the Attorney General to issue a formal opinion, because this would be an encroachment upon the duties of the county board of commissioners.

9. Counsel for the Petitioners defined the issue as the applicability of TEFRA, effective September 3, 1982, which was the date TEFRA was enacted.

10. Counsel for the Respondent contends that the valuations by the Property Tax Administrator were correct. The question is purely a valuation question; there is nothing to support illegal assessments of the subject properties. The protest involves a timely protest, and it is too late for a valuation review. The Respondent's motion to dismiss was denied by the Board.

11. Counsel for the Petitioners stated that 12 airlines filed with the county board of equalization on November 21, 1983. The Property Tax Administrator used the 1973 level of value in accordance with C.R.S. 39-1-104(12)(c), which is not applicable to public utilities. The 1981 level of value, in accordance with C.R.S. 39-4-101(2.5), is applicable to airlines.

12. Counsel for the Petitioners contends that on September 3, 1982, Section 532(b) of the TEFRA Act, extended protection to airline companies. The state's last authority was as of that date. The Act gives airlines treatment under the Act for tax year 1982.

13. Ms. Mary Anne Maurer, Property Tax Administrator, testified that the airlines were valued as public utilities. She rolled back the tax year 1981 level of value, with a 93 percent rollback. The assessment ratio was 30 percent. The worksheets of the Property Tax Administrator's valuations, dated June 1, 1982, do reflect that adjusted assessments were made during July 1982. Section 532(1)(B) of the TEFRA Act provides treatment at a ratio no higher than commercial and industrial properties, applicable for tax year 1983.

14. On cross-examination, Ms. Maurer testified that Petitioners' Exhibits A-1 through A-11 involves flight property and personal property, engines, and situs property (real). Exhibit A-3, involving United Airline's detailed personal and real property, indicated that 90 percent of the airline's property is personal. In her opinion, the TEFRA Act does not apply to tax year 1982.

15. Mr. Max Arnold, president of Max Arnold and Associates, was admitted as an expert witness. His involvement in the Quad R Act in Colorado started in 1980, 1981, and 1982. A study was done based on sales data furnished by the Property Tax Administrator for tax year 1980. In 1981, the study was expanded to 63 counties from the original 47 counties. A study of 1981 property sales for the sales ratio was submitted as Petitioner's Exhibit P, and included both commercial and industrial property, as well as real property. The methods used included sales from the assessors' records and sales documents, and review of the properties. He did use some 1979 and 1980 sales. The study was paid for by railroad companies, and has been made annually as ordered by the Legislature. Included in the study were at least 12 sales from each county.

16. He testified that the study was accepted by the Property Tax Administrator for 1981 assessments under the Quad R Act. The sales ratio study for Colorado indicated that the ratio was 10.91, and for the City and County of Denver was 10.55.

17. Under cross-examination, the witness testified that commercial and industrial property only were included in the study, while utility properties were not. Aircrafts were not included since they were personal property. The Property Tax Administrator had determined that the ratio to be used was 14 percent.

18. Counsel for the Respondent moved to dismiss on the grounds that the Petitioners had failed to meet the burden of proof concerning the valuation of real and personal property. The motion was denied by the Board. The TEFRA Act was drafted to avoid differences in valuations of real and personal property.

FINDINGS:

Member Beier finds that Section 532 of the TEFRA Act, amended public law, 97-248, Title V, P.532, 96 Stat. 701,

dated September 3, 1982, is applicable to abatements and refunds for tax year 1982.

Section B of the Act prohibits the levy or collection of taxes on the assessments of airlines at a value higher than the ratio of commercial and industrial properties of the same type.

The State Board of Equalization approved the abstract of assessments for the State of Colorado on September 21, 1982. The mill levys of the counties for tax year 1982 were not actually levied until November or December 1982.

Section C of the Act prohibits the levy or collection of taxes on air carrier transportation property at a ratio that exceeds the ratio applicable to commercial or industrial property in the same assessment jurisdiction.

The Property Tax Administrator has determined that the proper ratio to be used is 14 percent. The Colorado assessments for airlines are discriminatory for the reason that the Property Tax Administrator follows a different method of valuing airlines and other utilities as defined in C.R.S. 39-4-101(2.5).

CONCLUSIONS:

The effective date of the TEFRA Act is determined to be September 3, 1982.

The process of determining actual value, application of the assessment ratio to actual value, and the "equalization", had not been placed on the subject properties.

The Petitioners are entitled to assessments for tax year 1982 at 11 percent.

Member Beier determines that the Petitioners are entitled to a refund of the taxes assessed and paid on the assessments in excess of the 11 percent ratio.

ORDER:

In accordance with C.R.S. 39-2-127(2), since there was not a majority decision of the Board, the Petitioner's appeals cannot be granted.

DATED this 13th day of April, 1984.

BOARD OF ASSESSMENT
APPEALS

/s/ F. WILLIAM BEIER

F. William Beier

APPENDIX G

BOARD OF COUNTY COMMISSIONERS
CITY AND COUNTY OF DENVER
DENVER, COLORADO

November 22, 1983

Alan Poe
Gregory Cairns
Holland & Hart
Attorneys at Law
555 Seventeenth Street
Suite 2900
Denver, Colorado 80201

Gentlemen:

At a meeting of the Board of County Commissioners of the City and County of Denver, held November 21, 1983, the petition you submitted for the abatement of the 1982 personal property tax on the above mentioned schedule was presented.

The Board stated that the Colorado Property Tax Administrator is responsible for the assessed value placed on the property.

The Assessor's office reported in its memorandum to the Board that no opinion has been made by the Attorney General to the Colorado Property Tax Administrator on the applicability of Section 532(b) of the Tax Equity and Fiscal Responsibility Act of 1982. The Attorney General has suggested, however, that the application of 532(b) should begin January 1, 1983. This Act was passed by Congress, effective September 3, 1983.

After careful consideration of your petition, and the investigation brought in by the Assessor, the Board felt that they must uphold this assessment. The petition was, therefore, denied.

SINCERELY,

/s/ DOROTHY SILCHAK

Dorothy Silchack, Secretary

APPENDIX H

List of Parent Companies, Subsidiaries (Except Wholly Owned Subsidiaries) and Affiliates of Petitioners Pursuant to Rule 28.1

Petitioner United Air Lines, Inc.

UAL Corporation

Petitioner Frontier Airlines, Inc.

Frontier Holdings, Inc.

Petitioners Continental Airlines, Inc., Texas International Airlines, Inc. and Eastern Air Lines, Inc.

Texas Air Corporation

Petitioners Delta Airlines, Inc. and Western Airlines, Inc.

None

Petitioner Republic Airlines, Inc.

Northwest Airlines, Inc.

NWA, Inc.

Petitioners Trans World Airlines, Inc. and Ozark Airlines, Inc.

TWA Airlines, Inc.

Petitioner American Airlines, Inc.

AMR Corporation

APPENDIX I

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

Action Nos. 84 CV 4505 through
84 CV 4515 & 84 CV 6469
Court Room 2

STIPULATION

AMERICAN AIRLINES, INC., et al.,

Plaintiffs-Petitioners,

vs.

BOARD OF ASSESSMENT APPEALS OF THE STATE OF COLORADO, et al.,

Defendants-Respondents.

The plaintiffs and the City and County of Denver defendants, by counsel, stipulate as follows:

1. The valuation of the property, owned by the plaintiffs for the 1982 property tax year, by the Colorado Property Tax Administrator and apportioned to the City and County of Denver is the following:

American Airlines, Inc.	$ 111,800
Continental Air Lines, Inc.	3,902,100
Delta Air Lines, Inc.	2,791,400
Eastern Airlines, Inc.	182,300
Frontier Airlines, Inc.	16,138,700
Ozark Air Lines, Inc.	713,000
Republic Airlines, Inc.	2,395,600
Texas International Airlines, Inc.	1,306,200
Trans World Airlines, Inc.	819,600
United Airlines, Inc.	25,663,800
Western Airlines, Inc.	3,634,910

2. The plaintiffs allege in the above-captioned cases that Section 532(b) of the Tax Equity and Fiscal Responsibility Act of 1982 is applicable to the 1982 property tax year for Colorado.

3. If Section 532(b) of the Tax Equity and Fiscal Responsibility Act of 1982 is applicable to the 1982 property tax year in Colorado, then the valuation of the property owned by the plaintiffs and apportioned to Denver for the 1982 property tax year would be the following:

American Airlines, Inc.	$ 56,100
Continental Air Lines, Inc.	1,958,000
Delta Air Lines, Inc.	1,400,700
Eastern Airlines, Inc.	91,500
Frontier Airlines, Inc.	8,098,300
Ozark Air Lines, Inc.	357,800
Republic Airlines, Inc.	1,202,100
Texas International Airlines, Inc.	655,400
Trans World Airlines, Inc.	411,300
United Airlines, Inc.	12,877,900
Western Airlines, Inc.	1,824,000

4. This stipulation is not intended to have, and shall not be construed as having, any bearing on whether Section 532(b) of the Tax Equity and Fiscal Responsibility Act of 1982 is applicable to the 1982 property tax year in Colorado.

DATED: April 23, 1985.

STEPHEN H. KAPLAN #7826
City Attorney

By /s/ ROBERT F. STRENSKI

Robert F. Strenski #5325
Assistant City Attorney
353 City and County Bldg.
Denver, Colorado 80202
Telephone: (303) 575-2334

ATTORNEYS FOR CITY AND COUNTY OF DENVER DEFENDANTS

HOLLAND & HART

By /s/ JOHN R. MAXFIELD

Alan Poe #7641
John R. Maxfield #12641
555 Seventeenth Street
Suite 2900
Post Office Box 8749
Denver, Colorado 80201
Telephone: (303) 295-8000

ATTORNEYS FOR PLAINTIFFS-PETITIONERS

APPENDIX J

Excerpt from Petitions for Abatement or Refund of Taxes filed with Denver, July 22, 1983 (Exhibits D-1 through D-11 of Board of Assessment Appeals Record)

* * *

The assessed value of the above-referenced property determined by the Property Tax Administrator and assigned to the City and County of Denver is based on the application of an assessment ratio of 30%. Section 532(b) of the Tax Equity and Fiscal Responsibility Act of 1982 prohibits a state or a subdivision of a state from assessing, levying, or collecting property taxes against air carrier transportation property if such property taxes are based upon assessments that bear a higher ratio to the actual value of such property than the assessment ratio applied to other commercial and industrial property within the same assessment jurisdiction. For tax year 1982, the ratio of the assessed value of other commercial and industrial property to the actual value of such property is 11%. Therefore, the assessment ratio applied to the actual value of the above-referenced property to determine the assessed value of such property should have been 11%, rather than the 30% used by the Property Tax Administrator.

* * *

APPENDIX K

Excerpt from Memorandum attached to Petitions to Colorado Board of Assessment Appeals, December 20, 1983

* * *

TEFRA was signed into law by the President on September 3, 1982, and, under the general effective date provision of Title V of TEFRA, Section 532(b) became effective on that date. TEFRA § 523(b). As of September 3, 1982, the assessment process in Colorado for tax year 1982 had not been completed, since the State Board of Equalization did not make the certification required by Section 39-9-105(1), Colorado Revised Statutes 1973, until September 21, 1982. Moreover, property taxes for tax year 1982 had not been (and could not have been) levied by any county as of September 3, 1982, and the collection of 1982 property taxes in Colorado will not occur until February 28, 1983 or later. Sections 39-1-111 and 39-10-104, Colorado Revised Statutes 1973. Under these circumstances, the clear language of Section 532(b) of TEFRA prohibits the state and the counties from assessing, levying, and collecting the discriminatory taxes against the air carrier transportation property of the airline companies for tax year 1982 and requires that such taxes be abated or refunded to the extent that they are discriminatory. This interpretation of Section 532(b) of TEFRA is supported by the legislative history of that provision and predecessor acts, the judicial construction of predecessor acts, and the administrative construction of Section 532(b) in other states.

* * *

APPENDIX L

Excerpt from Complaints filed by Airlines in the District Court, City and County of Denver, Colorado May 9, 1984

* * *

7. Section 532(b) of the Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97-248, 96 Stat. 701), which was effective on September 3, 1982, prohibits a state, a subdivision of a state, or an authority acting for a state or a subdivision of a state from assessing, levying, or collecting property taxes against air carrier transportation property if such property taxes are based upon assessments that bear a higher ratio to the actual value of such property than the assessment ratio applied to other commercial and industrial property within the same assessment jurisdiction.

8. Subsequent to September 3, 1982, in contravention of Section 532(b) of the Tax Equity and Fiscal Responsibility Act of 1982, various agencies and officials of the State of Colorado and the City and County of Denver took action to assess, levy, and collect property taxes against air carrier transportation property of [the Airline], which property taxes were based upon assessments that bear a higher ratio to the actual value of such property than the assessment ratio applied to other commercial and industrial property within the same assessment jurisdiction.

* * *

APPENDIX M

Excerpt from Plaintiffs'-Appellants' Joint Notice of Appeal, filed in Colorado Supreme Court, July 18, 1985

III. *ADVISORY LISTING OF ISSUES TO BE RAISED ON APPEAL*

* * *

2. Whether 49 U.S.C. § 1513(d) precludes the assessment, levy and collection of discriminatory property taxes on the property owned by the Airline Companies for tax year 1982 pursuant to Colorado's statutes.

* * *

Supreme Court, U.S.
FILED
AUG 21 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-124

In The

Supreme Court of the United States

October Term, 1989

o

United Air Lines, Inc., *et al.*,
Petitioners,

vs.

Board of Assessment Appeals of the State of Colorado, *et al.*,
Respondents.

o

On Petition For Writ Of Certiorari To The Colorado Supreme Court

o

Respondents' Brief In Opposition

o

Stephen H. Kaplan
City Attorney

Robert F. Strenski
Assistant City Attorney

353 City and County Building
Denver, Colorado 80202
(303) 575-3611

Counsel of Record for the City and County of Denver

August, 1989

Supreme Court, U.S.
FILED
AUG 21 1989
JOSEPH F. SPANIOL, JR.
CLERK

QUESTIONS PRESENTED

Expressed in the circumstances of this case, the question is:

> Whether § 532(b) of the Tax Equity and Fiscal Responsibility Act of 1982, codified at 49 U.S.C. App. § 1513 (d) (1982), which was signed into law on September 3, 1982, and prohibits state taxing authorities from taxing air carrier transportation property differently from other commercial and industrial property in the same assessment jurisdiction, is applicable to the 1982 Colorado property taxes assessed on the property of eleven airline companies and levied and collected by Colorado taxing authorities when the assessments were completed prior to the effective date of the federal statute and were made in accordance with existing Colorado law?

In the event certiorari is granted, then the respondents will raise the following issue as a defense:

> Whether the application of 49 U.S.C. , App. § 1513 (d) to the 1982 Colorado property tax year is constitutionally prohibited because such application is destructive of state sovereignty and violates the Tenth Amendment of the United States Constitution?

TABLE OF CONTENTS

PAGE

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTIONAL STATEMENT 1

STATEMENT OF THE CASE 2

REASONS FOR DENYING THE WRIT 2

1. The problem in our case is not a recurring one and is important only to the immediate parties to our case 2

2. The validity of the federal statute is not in issue in our case 3

3. The Colorado Supreme Court relied on the definition of assessment contained in federal law 3

4. The construction of § 1513(d)(1)(b) by the Colorado Supreme Court does not render this provision meaningless 4

5. The application of § 1513(d)(1)(c) by the Colorado Supreme Court does not conflict with federal precedent and the underlying purpose of § 1513(d) 5

6. The application of § 1513(d) to the 1982 Property Tax Year is constitutionally prohibited because such application is destructive of state sovereignty and violates the Tenth Amendment of the United States Constitution 6

CONCLUSION 7

TABLE OF AUTHORITIES

CASES **PAGE**

Arkansas-Best Freight Systems, Inc. v. Cochran, 546 F. Supp. 904 (M.D. Tenn. 1981) 3, 5

Hoffman v. Colo. State Bd. of Assessment, 683 P.2d 783 (Colo. 1984) 2

Northern Railroad Co. v. Department of Revenue, 570 F. Supp. 585 (W.D. Wis. 1983) *modified*, 604 F. Supp. 1575 (W.D. Wis. 1985) 6

Tennessee v. L & N RR., 478 F. Supp. 199 (M.D. Tenn. 1979) aff'd 652 F.2d 59 (6th Cir. 1981) cert. den. 454 U.S. 834 (1981) 5

Trailer Train Co. v. State Board of Equalization, 511 F. Supp. 553 (1981) affirmed in part and vacated in part 697 F.2d 860 (9th Cir. 1983), cert. den. 464 U.S. 846, (1983) 4, 5

Western Air Lines, Inc. v. Board of Equalization, 480 U.S. 123 (1987) 3

STATUTES

49 U.S.C. APP. § 1513(d) 2, 3, 4, 5, 6

49 U.S.C. APP. § 1513(d)(1)(A) 4, 5

49 U.S.C. APP. § 1513(d)(1)(B) 4, 5, 6

49 U.S.C. APP. § 1513(d)(1)(C) 5

49 U.S.C. APP. § 1513(d)(2)(A) 3, 6

Section 306 of the Railroad Revitalization and Regulatory Reform Act (4-R Act), 49 U.S.C. § 11503 4

CONSTITUTION

United States Constitution, Art. VI 3

No. 89-124

In The

Supreme Court of the United States

October Term, 1989

o

United Air Lines, Inc., *et al.*,
Petitioners,

vs.

Board of Assessment Appeals of the State of Colorado, *et al.*,
Respondents.

o

On Petition For Writ Of Certiorari To The Colorado Supreme Court

o

Respondents' Brief In Opposition

o

The Respondents respectfully request that this Court deny the petition for writ of certiorari, seeking review of the opinion by the Colorado Supreme Court. That opinion is reported at 773 P.2d 1033 (1989).

OPINIONS BELOW

The opinion of the Colorado Supreme Court is reported at 773 P.2d 1033 (1989). With this exception, the respondents adopt the petitioners statement about the earlier opinions contained in the petition for writ of certiorari.

JURISDICTIONAL STATEMENT

The Petitioners' contention that the Colorado State Board of Equalization could modify the valuation of their property for 1982 property taxes presents a jurisdictional issue. The Petitioners' contention was rejected by the Colorado Supreme Court. Assuming, for

purposes of argument, that the State Board Of Equalization could value the airline property, as contended by the Petitioners, then the Petitioners failed to exhaust the available remedy before the State Board of Equalization. The Petitioner made no protest to the State Board of Equalization between September 3, 1982 and September 21, 1982. The failure to timely exhaust this administrative remedy would be a jurisdictional defect requiring dismissal. *Hoffman v. Colo. State Bd. of Assessment*, 683 P.2d 783 (Colo. 1984)

STATEMENT OF THE CASE

Respondents believe the Petitioners' statement to be insufficient and, therefore, supply this statement. The Respondents adopt the statement of the facts by the Colorado Supreme Court at pages 1035-1039 of 773 P.2d and identified as section I of the Court's opinion. Furthermore, the parties agree that 49 U.S.C.App. § 1513(d) is binding on them for tax years after 1982. The resolution of the dispute in our case applies to one tax year, the 1982 property tax year in Colorado.

REASONS FOR DENYING THE WRIT

1. The problem in our case is not a recurring one and is important only to the immediate parties to our case.

The issue in our case is whether § 49 U.S.C.App. § 1513(d) applies to the 1982 property tax year in Colorado. The parties do not dispute that the statute is applicable for subsequent tax years. Indeed, the valuation of airline property for purposes of taxation has been in accordance with this federal statute for subsequent tax years.

The outcome of this case is important only to the parties. The Airlines statement that seven other Colorado counties will be affected is incomplete. The Colorado Supreme Court notes at page 1036 of 773 P.2d that the Airlines are requesting a tax refund of nearly $3,200,000 in our case alone. Therefore, the refunds from other counties would be a small sum.

The issue in our case is of limited application. The problem is a one time occurrence and is limited to the parties. The issue is not worthy of further consideration.

2. The validity of the federal statute is not in issue in our case.

The validity of federal law is not an issue in our case. The Colorado Supreme Court states at page 1039 of 773 P.2d that

> Nor is it disputed that 49 U.S.C.App. § 1513(d) is binding on the state of Colorado under the Supremacy Clause, U.S. Const. art. VI, for tax years subsequent to the effective date of the federal statute.

Airline property has been valued for property taxes in Colorado in accordance with 49 U.S.C.App. § 1513(d) for tax years beginning after the effective date of this federal statute. The Colorado Supreme Court and the parties recognize the validity of the federal statute.

3. The Colorado Supreme Court relied on the definition of assessment contained in the federal statute.

The decision of the Colorado Supreme Court is not in conflict with *Western Air Lines, Inc. v. Board of Equalization*, 480 U.S. 123 (1987). The opinion by the Colorado Supreme Court recognizes that the question in *Western Air Lines* is governed by federal law. 773 P.2d at 1043. In our case, the Colorado Supreme Court applied the definition of assessment contained in 49 U.S.C.App. § 1513(d)(2)(A).

The Colorado Supreme Court applied the federal statutory definitions. The federal statute defines assessment to mean "valuation for a property tax levied by a taxing jurisdiction" . In Colorado the valuation of the airline property was completed prior to the effective date of 49 U.S.C. App. § 1513(d). 773 P.2d at 1039-1043. See *Arkansas - Best Freight Systems, Inc. v. Cochran*, 546 F.Supp. 904 (M.D. Tenn. 1981) (Court construes Federal Motor Carrier Act of 1980, which prohibits assessment of motor carrier property at higher ratio to true market value than ratio applicable to other commercial and industrial property, as applicable to all assessments actually made after the effective date of federal statute.)

The decision of the Colorado Supreme Court implements the purposes and policies of 49 U.S.C.App. § 1513(d). The Court and the parties recognize the validity of the statute. The terms of the statute, however, indicate a Congressional intent not to disrupt the state tax systems when the property valuations were completed prior to the effective date of the federal statute.

4. The construction of § 1513 (d)(1)(B) by the Colorado Supreme Court does not render this provision meaningless.

The interpretation of § 1513(d)(1)(B) by the Colorado Supreme Court gives effect to the subsection. The Court notes that the subsection makes "explicit what would otherwise be left only to inference-namely, when a state places a valuation for assessment on air carrier property that is violative of subparagraph (A), the state is prohibited from taking further action to levy or collect any taxes based on the impermissible assessment" . 773 P.2d at 1044. This interpretation of the subsection does not render it meaningless.

Construing Section 1513(d)(1)(B) to only prohibit the levy and collection of taxes based on valuations prohibited by 1513(d)(1)(B) gives effect to all the provisions of Section 1513(d). Subparagraph B permits the levy and collection of taxes on assessments made prior to the effective date of Section 1513(d) regardless of whether the assessments meet the terms of Section 1513(d)(1)(A). Subparagraph B does not permit the levy and collection of taxes on assessments prohibited by Section 1513(d)(1)(A) after the effective date. Section 1513(d)-(1)(B) does not prohibit all tax levies and collections. If Congress intended to prohibit all tax collections then it could have provided that tax jurisdictions are prohibited from collecting *ad valorem* taxes for the valuation of airline property having a higher assessment ratio than other commercial and industrial property. Congress did not so provide. Instead, it only prohibited the levy and collection of taxes based on assessments prohibited by Section 1513(d)(1)(A).

This construction gives effect to Congressional intent. Congress did not intend to disrupt state property tax systems by enacting Section 1513(d) without an effective date. Instead, it intended that Section 1513(d)(1)(B) prohibit the levy and collection of taxes only as to assessments prohibited by Section 1513(d)(1)(A). In our case, the assessments were completed prior to the effective date of the statute and, therefore, the assessments are not prohibited by Section 1513-(d)(1)(A).

The tax authorities disagree with the Petitioners' construction and application of *Trailer Train Co. v. State Board of Equalization*, 511 F. Supp. 553 (1981) affirmed in part and vacated in part 697 F.2d 860 (9th Cir. 1983), cert. den. 464 U.S. 846, (1983). The provisions of Section 306 of the Railroad Revitalization and Regulatory Reform Act (4-R Act), codified as 49 U.S.C. Section 11503 are materially different from Section 1513(d). Compare the provisions of the 4-R Act found in *Trailer Train* at page 862, footnote 1 with Section 1513(d).

The portion of the 4-R Act relevant to the decision in *Trailer Train* is 49 U.S.C. Section 11503(c). Section 1513(d) has no provisions comparable to 49 U.S.C. Section 11503(c).

Indeed, in *Trailer Train* the tax officials attempted to apply a higher tax rate to the value of the railroad property than to other industrial and commercial property. The issue in *Trailer Train* was not whether the levy and collection of the tax was prohibited by a provision comparable to Section 1513(d)(1)(B). Admittedly 49 U.S.C. § 11503(b)(2) is virtually identical to Section 1513(d)(1)(B). However, the Court did not interpret Section 11503(b)(2) in *Trailer Train*. The opinion in *Trailer Train* is inapposite to the issue to be determined in our case.

Finally, *Tennessee v. L & N RR.*, 478 F. Supp. 199 (M.D. Tenn. 1979) aff'd 652 F.2d 59 (6th Cir. 1981) cert. den. 454 U.S. 834 (1981) does not have the same factual situation as our case. First, in *L & N RR.* the federal act became effective prior to the valuation of the railroad's property in 1979. *Cf. Arkansas - Best Freight Co. v. Cochran, supra*, decided by the same court during 1981 in a similar case. In Colorado, the Airline property was valued before the effective date of Section 1513(d). Next, in *L & N RR.* Congress provided a three-year period between the enactment of the 4-R Act and its effective date to provide time for compliance by the state legislatures. In our case, Section 1513(d) became effective immediately upon signing by the President and Congress allowed no time for the Colorado General Assembly to comply with the requirements of Section 1513(d) for 1982. Finally, construing Section 1513(d) to be inapplicable solely to the 1982 tax year in Colorado does not frustrate any express Congressional purpose.

5. The application of § 1513(d)(1)(C) by the Colorado Supreme Court does not conflict with federal precedent and the underlying purpose of § 1513(d).

The levy and collection of 1982 Colorado property taxes for airline property is not prohibited by 49 U.S.C.App. § 1513(d)(1)(C). This subdivision of the statute prohibits a state or its subdivision from levying or collecting an "ad valorem tax on air carrier transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction." The actual tax rate for 1982 in our case was 89.261 mills. This mill levy is the same for all property in Denver including both airline property and other commercial and industrial property. Thus, §

1513(d)(1)(C) does not prohibit the taxes in our case because a uniform tax rate was levied for airline property and other commercial and industrial property.

The Petitioners' proposed construction of § 1513(d)(1)(C) renders § 1513(d)(1)(B) superfluous. Subparagraph (A) prohibits discriminatory assessments, while subparagraph (B) prohibits the levy and collection of taxes based on discriminatory assessments. If, as the Petitioners argue, the term "tax rate" in subparagraph (C) were to be construed to mean the "effective tax rate" resulting from a disparate assessment violative of subparagraph (A), the prohibition of subparagraph (C) would be nothing more than a mere repetition of subparagraph (B). A statute should be interpreted in a manner that gives effect to all its provisions and not in a way that renders any part superfluous.

The Respondents adopt the analysis of the Colorado Supreme Court. 773 P.2d at pages 1044-1045. The Courts' basis for distinguishing *Northern Railroad Co. v. Department of Revenue*, 570 F. Supp. 585 (W.D. Wis. 1983) *modified*, 604 F. Supp. 1575 (W.D. Wis. 1985) is also adopted by the Respondents. 773 P.2d at 1045, fn. 9. The opinion of the Colorado Supreme Court is in accord with the provisions of the federal law.

6. The application of § 1513(d) to the 1982 Colorado Property Tax Year is constitutionally prohibited because such application is destructive of state sovereignty and violates the Tenth Amendment of the United States Constitution.

The Respondents contended in the proceeding below that if the federal statute is applicable to the 1982 Colorado property tax year then the application would constitute an unconstitutional usurpation of state sovereignty in violation of the Tenth Amendment. The Colorado Supreme Court did not address this claim because it held that § 1513(d) did not apply to the 1982 taxes. 773 P.2d at 1039, fn. 6. This claim will be raised as a defense in the event this Court grants the petition for a writ of certiorari.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

ROBERT F. STRENSKI
Assistant City Attorney
353 City and County Building
Denver, Colorado 80202
(303) 575-3611

Counsel of Record for the
City and County of Denver